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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

MANAN BHATT, LISA RUH,
SUNIL AMIN, and TRUSHAR
PATEL, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC

Defendant.

Case No. 16-3171

**CLASS ACTION COMPLAINT
FOR:**

- (1) Violations of California
Consumer Legal Remedies Act
- (2) Violations of Unfair Competition
Law
- (3) Breach of Implied Warranty
Pursuant to Song-Beverly
Consumer Warranty Act
- (4) Breach of Express Warranty –
Magnuson-Moss Warranty Act
- (5) Breach of Implied Warranty
- (6) Breach of Implied Warranty –
Magnuson-Moss Warranty Act
- (7) Violations of Georgia Fair
Business Practices Act
- (8) Violations of Uniform Deceptive
Trade Practices Act
- (9) Breach of Implied Warranty of
Merchantability
- (10) Fraud by Concealment
- (11) Unjust Enrichment

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Plaintiffs Manan Bhatt, Lisa Ruh, Sunil Amin, and Trushar Patel
3 bring this action for themselves and on behalf of all persons in the United States
4 who purchased or leased certain vehicles equipped with uniform and uniformly
5 defective HVAC Systems manufactured, distributed, and/or sold by Mercedes-Benz
6 USA, LLC, and/or its related subsidiaries or affiliates (“Mercedes”), as described
7 below.

8 2. The vehicles at issue in this action include the 2008-2016
9 Mercedes C-Class, 2013-2016 Mercedes CLA-Class, 2003-2009 Mercedes CLK-
10 Class, 2004-2016 Mercedes CLS-Class, 2003-2016 Mercedes E-Class, 2007-2016
11 Mercedes GL-Class, 2010-2016 Mercedes GLK-Class, 2006-2016 Mercedes M-
12 Class, 2006-2015 Mercedes R-Class, 2006-2016 Mercedes S-Class, 2003-2012
13 Mercedes SL-Class, and 2004-2010 Mercedes SLK-Class (the “Class Vehicles”).

14 3. This action is brought to remedy violations of law in connection
15 with Mercedes’s design, manufacture, marketing, advertising, selling, warranting,
16 and servicing of the Class Vehicles. These Class Vehicles’ heating, ventilating, and
17 air conditioning systems (“HVAC Systems”) have a serious design defect that
18 causes the HVAC Systems to (a) accumulate mold and mildew residue or growth
19 within the HVAC System; (b) emit a moldy or mildewy odor that permeates the
20 vehicle cabin when the HVAC system is activated; and (c) cause the Vehicle’s
21 passenger cabin to be unbearable and thus unusable for its intended purpose.

22 4. On information and belief, the HVAC System is substantially
23 the same, from a mechanical engineering standpoint, in all Class Vehicles, in that
24 the HVAC Systems in all Class Vehicles are made up of substantially the same
25 components [evaporator, evaporator housing, ducting, fan, filter, drain lines, etc.],
26 and all employ the same general mechanism to deliver ventilation, heating, and
27 cooling to the passenger cabin.
28

1 5. Because of its faulty design, during normal and expected
2 conditions the HVAC System fails to properly evaporate or drain the condensation
3 that accumulates within the system, creating a moist, hospitable environment for the
4 growth of bacteria, fungus, mold, and spores, which then are blown into the
5 passenger cabin when the HVAC system is in use (the “HVAC System Defect”).
6 The mold-carrying air has a foul, mildewy smell that is highly unpleasant and can
7 cause respiratory problems and aggravate allergies.

8 6. The moldy, smelly air emitted by the HVAC System Defect is
9 not a one-time event in the Class Vehicles – Class Members report it occurs every
10 time the HVAC System is turned on, and is especially pervasive in humid weather
11 or after it has rained.

12 7. When Plaintiffs and Class Members complain to Mercedes
13 about the HVAC System Defect, Mercedes’s only “solutions” are replacement of
14 the cabin air filter or “flushing the system”¹, both of which are temporary and do
15 not address the original defective HVAC System design, and thus are not
16 permanent fixes for the Defect. What is worse, Mercedes made Class Members pay
17 out of pocket for these nonpermanent “fixes” for the HVAC System Defect even if
18 Class Members’ vehicle remained under warranty at the time.

19 8. The HVAC System Defect inhibits Class Members’ proper and
20 comfortable use of their vehicles’ air conditioning, and requires Class Members to
21 pay for repeated replacements of the cabin air filter and/or “flushing” of the HVAC
22 System.

23 9. On information and belief, prior to the manufacture and sale of
24 the vehicles at issue, Mercedes knew of the HVAC System Defect through sources
25 such as repair data; replacement part sales data; early consumer complaints made
26

27 ¹ “Flushing the system” consists of partially disassembling the dashboard and
28 drilling a hole into the HVAC System and applying a disinfecting solution to the
evaporator coil.

1 directly to Mercedes, collected by the National Highway Transportation Safety
 2 Administration's Office of Defect Investigation ("NHTSA ODI"), and/or posted on
 3 public online vehicle owner forums; testing done in response to those complaints;
 4 aggregate data from Mercedes dealers; and other internal sources. Yet despite this
 5 knowledge, Mercedes failed to disclose and actively concealed the HVAC System
 6 Defect from Class Members and the public, and continued to market and advertise
 7 the Class Vehicles as "sophisticated," "comfortable," and "state-of-the-art"
 8 vehicles, which they are not.

9 10. Mercedes knew or should have known that the "fix" it charged
 10 Class Members for to "remedy" the HVAC System Defect – replacing the cabin air
 11 filter or "flushing the system" – is not a permanent solution for the Defect.

12 11. Mercedes has failed to provide a permanent in-warranty fix for
 13 the Defect and failed to reimburse Class Members for the costs of its temporary
 14 "fixes" of filter replacement and "flushing the system".

15 12. As a result of Mercedes's alleged misconduct, Plaintiffs and
 16 Class Members were harmed and suffered actual damages, in that the Class
 17 Vehicles have manifested, and continue to manifest, the HVAC System Defect,
 18 Mercedes has not provided a permanent remedy for this Defect. Furthermore,
 19 Plaintiffs and Class Members have incurred, and will continue to incur, out-of-
 20 pocket unreimbursed costs and expenses relating to the HVAC System Defect.

21 **PARTIES**

22 *Plaintiff Manan Bhatt*

23 13. Plaintiff Manan Bhatt resides in Torrance, California.

24 14. Mr. Bhatt owns a 2010 Mercedes C300W Sports Sedan, which
 25 he purchased on August 25, 2013, as a Mercedes Certified Pre-Owned vehicle from
 26 Alfano Motorcars Inc. in San Luis Obispo, California. Mr. Bhatt's Class Vehicle
 27
 28

1 was manufactured, sold, distributed, advertised, marketed, and warranted by
2 Mercedes, and bears the Vehicle Identification No. WDDGF5EBOAF366596.

3 15. Mr. Bhatt purchased his Class Vehicle for his personal, family,
4 and household use.

5 16. Before purchasing the vehicle, Mr. Bhatt reviewed the vehicle's
6 ownership history and reported structural and equipment damage through the
7 website carfax.com. The report indicated no issues or reported recalls.

8 17. Mr. Bhatt purchased a Certified Pre Owned warranty from
9 Mercedes for \$2295.00. Mr. Bhatt's vehicle remained under warranty throughout
10 the relevant period described herein during which Mercedes refused to permanently
11 repair or replace his defective HVAC System.

12 18. Mr. Bhatt experienced a noxious odor caused by the HVAC
13 System Defect less than a week after he purchased the vehicle.

14 19. After the incident, Mr. Bhatt notified his selling dealer, Alfano
15 Motorcars, by phone about the foul moldy smell. The selling dealer suggested that
16 Mr. Bhatt take the car to a local Mercedes-Benz dealer since Alfano Motorcars is
17 approximately 200 miles from Mr. Bhatt's residence. Mr. Bhatt called the
18 Mercedes-Benz dealer, Mercedes-Benz of South Bay, in Torrance, CA and
19 explained the problem. The dealer told Mr. Bhatt that any repair of the HVAC
20 System would not be covered by warranty until the Vehicle was eligible for its first
21 service under warranty, which was in May 2014, approximately one year later.

22 20. From approximately a week after his purchase when the smell
23 originated to his first service visit in May 2014, some eight months later, Mr. Bhatt
24 dealt with constantly foul and unpleasant odors in his newly acquired Class
25 Vehicle. In an attempt to make the passenger cabin bearable so as to be able to
26 drive and utilize his vehicle, Mr. Bhatt would air out the vehicle prior to driving it
27 by opening its windows, purchased and sprayed air freshener at a cost of
28 approximately \$20.00, into the vehicle each time he entered it.

1 21. In May 2014, Mr. Bhatt took the vehicle to Mercedes-Benz of
2 South Bay in Torrance, California.

3 22. Mr. Bhatt explained the continuing smell to the Mercedes-Benz
4 dealer who proceeded to replace the cabin air filter at a cost of approximately
5 \$56.75 plus labor to Mr. Bhatt. Although Mr. Bhatt reasonably believed that the
6 repair would be covered under the warranty he purchased, the Mercedes dealer
7 claimed that it needed replacing due to “wear and tear” that exceeded the warranty.
8 Mr. Bhatt disputed the dealer’s claim that he had in any way contributed to or
9 caused the odor, but the dealer offered Mr. Bhatt no other means of alleviating the
10 foul odor.

11 23. Mr. Bhatt was advised to turn off the Air Conditioner prior to
12 arrival to his destination to try to eradicate the odor, which he did.

13 24. The moldy odor disappeared after the service visit but returned
14 in December 2014.

15 25. Mr. Bhatt again complained of the smell to Mercedes-Benz of
16 South Bay. The dealer offered Mr. Bhatt two temporary “fixes” for the problem at
17 Mr. Bhatt’s expense: (1) replace the air cabin filter again for approximately \$58 in
18 parts or (2) perform a complete “flush” of the HVAC System for approximately
19 \$360 in parts and labor.

20 26. As Mr. Bhatt’s parents were visiting from India the next week,
21 he felt he had no choice but to accept another temporary “fix” and therefore chose
22 to have the cabin air filter replaced at a cost of \$57.65 plus tax to him.

23 27. In February 2015, Mr. Bhatt lodged an official complaint about
24 the foul moldy smell while he was at Mercedes-Benz of South Bay. A Mercedes-
25 Benz representative called Mr. Bhatt to discuss the complaint within two weeks of
26 the date of his last service. The representative explained to Mr. Bhatt that Mercedes
27 cannot provide the replacement cabin air filter for free because, “There is no
28 official recall for this part from Mercedes-Benz manufacturing location.

1 Unfortunately, we cannot provide you with the free parts or labor". However, as a
2 good faith gesture the representative added a complimentary cabin air filter
3 replacement to Mr. Bhatt's account so that Mr. Bhatt would not be charged for the
4 replacement when the moldy odor returns. The representative claimed that the
5 warranty did not cover Mr. Bhatt's previous cabin air filter replacements because
6 the replacements were needed due to excessive "wear and tear" caused by Mr.
7 Bhatt.

8 28. On or about February 6, 2016, Mr. Bhatt had his cabin filter
9 changed by Mercedes-Benz of South Bay due to severe foul odor which was
10 covered by a "one time good[will] gesture."

11 29. Approximately one month after this filter change in Mr. Bhatt's
12 Class Vehicle, the foul odor returned.

13 30. To date, Mr. Bhatt has paid approximately \$194.47 out of
14 pocket for temporary "fixes" for the HVAC System Defect.

15 31. Mr. Bhatt expected his Class Vehicle to be of good and
16 merchantable quality and not defective. He had no reason to know of, or expect,
17 that mold would develop in his vehicle's HVAC System, nor was he aware from
18 any source prior to purchase of the unexpected, extraordinary, and costly
19 maintenance steps Mercedes suggests are necessary to prevent its development.
20 Had he known these facts, he would not have bought his Class Vehicle or would
21 have paid less for it.

22 32. Mr. Bhatt regularly saw advertisements for Mercedes vehicles
23 on television, in magazines, on billboards, in brochures at the dealership, and on the
24 Internet during the years before he purchased his Mercedes C300W Sports Sedan in
25 2013. Although he does not recall the specifics of the many Mercedes
26 advertisements he saw before he purchased his Class Vehicle, he does recall that
27 state-of-the-art engineering and a comfortable interior were frequent themes across
28 the advertisements he saw. Those advertisements about state-of-the-art engineering

1 and a comfortable interior influenced his decision to purchase his vehicle. Had
2 those advertisements or any other Mercedes materials disclosed to Mr. Bhatt that
3 the Class Vehicles had defective HVAC Systems, or that he would have to pay for
4 repairs/replacement of the HVAC system and/or air filtration system, he would not
5 have purchased his Class Vehicle, or would not have purchased it at the price paid.

6
7 Plaintiff Lisa Ruh

8 33. Plaintiff Lisa Ruh resides in San Diego, California.

9 34. Ms. Ruh owns a 2011 Mercedes C300W Sports Sedan, which
10 she purchased on September 10, 2011, as a Mercedes Certified Pre-Owned vehicle
11 from Mercedes Benz of Laguna Niguel.

12 35. Ms. Ruh's Class Vehicle was manufactured, sold, distributed,
13 advertised, marketed, and warranted by Mercedes, and bears the Vehicle
14 Identification No. WDDGF5EB7BA461719.

15 36. Ms. Ruh purchased her Class Vehicle for her personal, family,
16 and household use.

17 37. Ms. Ruh expected her Class Vehicle to be of good and
18 merchantable quality and not defective. She had no reason to know of, or expect,
19 that mold would develop in her vehicle's HVAC System, nor was she aware from
20 any source prior to purchase of the unexpected, extraordinary, and costly
21 maintenance steps Mercedes suggests are necessary to prevent its development.
22 Had she known these facts, she would not have bought her Class Vehicle or would
23 have paid less for it.

24 38. Ms. Ruh purchased her Class Vehicle as a Certified Pre Owned
25 vehicle which provides Certified Pre Owned Warranty coverage past the new
26 vehicle warranty. A further Certified Pre Owned Extended Warranty was added
27 onto the vehicle. Ms. Ruh's Class Vehicle remained under warranty throughout the
28

1 relevant period described herein during which Mercedes refused to permanently
2 repair or replace her defective HVAC system.

3 39. Ms. Ruh experienced a noxious odor caused by the HVAC
4 System Defect in approximately summer 2014.

5 40. On or about October 9, 2014, Ms. Ruh complained to her
6 service advisor at Mercedes-Benz of San Diego in San Diego, CA about a very
7 strong toxic smell coming from the vehicle each time the HVAC system is turned
8 on. The service advisor indicated that they did not notice nor could they detect an
9 abnormal odor. The advisor also stated that until they were able to corroborate the
10 odor, that there wasn't anything that they could do about it.

11 41. Shortly thereafter, Ms. Ruh had to contact Mercedes On-Site
12 Service to have her Class Vehicle towed to the dealer because it would not start.
13 She notified the on-site technician about a steadily increasing foul moldy smell
14 when the HVAC was in use and how the dealership had dismissed the concern. She
15 asked if he could validate the presence of a foul odor and he concurred that an odd
16 odor was present. He suggested and proceeded to spray Febreze at the base of the
17 windshield to try and remedy the odor. After the vehicle was towed to the
18 dealership, Ms. Ruh further complained of a smell to which the service advisor
19 advised that they still did not notice any odd smell. The odor remained.

20 42. On or about June 25, 2015, Ms. Ruh again complained of the
21 odor to her service her advisor at Mercedes-Benz of San Diego and explained that
22 the toxic odor had gotten considerably worse and was making her nauseous, giving
23 her headaches, making her cough, and affecting her well-being, especially because
24 she has an underlying autoimmune disease. The dealer told Ms. Ruh that a filter and
25 disinfecting solution would be necessary and not covered by warranty. Ms. Ruh
26 reasonably believed the repairs would be covered by her warranty and requested
27 same but was denied. Ms. Ruh was advised the vehicle was not defective. Facing
28 no reasonable alternative, Ms. Ruh was charged and paid \$152.48 plus tax for a

1 filter, disinfectant, and labor – all for what was only a temporary “fix”. The smell
2 quickly returned less than a week later.

3 43. In order to try to mitigate the smell, Ms. Ruh avoided running
4 the air conditioner until and unless it was absolutely unbearable to go without it.

5 44. Ms. Ruh continued to experience breathing/coughing issues and
6 an immediate sense of light headedness/nausea with the use of the HVAC system.
7 During long drives, she would experience runny nose and headaches. To mitigate
8 this, she would avoid the use of her HVAC system despite the heat experienced in
9 San Diego. She also received comments from friends while riding in her vehicle
10 that there was indeed a very disturbing odor with the use of the HVAC system.

11 45. On or about February 15, 2016, Ms. Ruh brought in her vehicle
12 to Mercedes-Benz of Escondido for continued foul odor smells coming from the
13 vehicle and other complaints. The dealer performed an evaporator clean and
14 installed a new air filter at no charge to her under a “goodwill” policy.

15 46. The smell returned on or about March 4, 2016, some eighteen
16 days after the treatment was conducted.

17 47. To date, Ms. Ruh has paid \$163.88 out of pocket for temporary
18 “fixes” for the HVAC System Defect.

19 48. Ms. Ruh regularly saw advertisements for Mercedes vehicles on
20 television, in magazines, on billboards, in brochures at the dealership, and on the
21 Internet during the years before she purchased her Mercedes C300W Sports Sedan
22 in 2011. Although she does not recall the specifics of the many Mercedes
23 advertisements she saw before she purchased her Sports Sedan, she does recall that
24 state-of-the-art engineering and a comfortable interior were frequent themes across
25 the advertisements she saw. Those advertisements about state-of-the-art engineering
26 and a comfortable interior influenced her decision to purchase her vehicle. Had
27 those advertisements or any other Mercedes materials disclosed to Ms. Ruh that the
28 Class Vehicles had defective HVAC Systems, or that she would have to pay for

1 repairs/replacement of the HVAC system and/or air filtration system, she would not
2 have purchased her Class Vehicle, or would not have purchased it at the price paid.

3 Plaintiff Sunil Amin

4 49. Plaintiff Sunil Amin resides in Atlanta, Georgia.

5 50. Mr. Amin owns a 2013 Mercedes C250 Coupe, which he
6 purchased new on November 10, 2012, from RBM of Atlanta North in Alpharetta,
7 Georgia.

8 51. Mr. Amin's Class Vehicle was manufactured, sold, distributed,
9 advertised, marketed, and warranted by Mercedes, and bears the Vehicle
10 Identification No. WDDGJ4HB0DF966835.

11 52. Mr. Amin purchased the Class Vehicle for his personal, family,
12 and household use.

13 53. Mr. Amin expected his Class Vehicle to be of good and
14 merchantable quality and not defective. He had no reason to know of, or expect,
15 that mold would develop in his vehicle's HVAC System, nor was he aware from
16 any source prior to purchase of the unexpected, extraordinary, and costly
17 maintenance steps Mercedes suggests are necessary to prevent its development.
18 Had he known these facts, he would not have bought his Class Vehicle or would
19 have paid less for it.

20 54. Mr. Amin first experienced a noxious odor caused by the HVAC
21 System in approximately January of 2014.

22 55. Since that time, the noxious odor has continued unabated. The
23 HVAC system emits the odor when the vehicle's climate control system is first
24 engaged and generally persists.

25 56. The strength of the odor intensifies after any periods of rain.

26 57. Mr. Amin regularly saw seen advertisements for Mercedes
27 vehicles on television, in magazines, on billboards, in brochures at the dealership,
28 and on the Internet during the years before he purchased his Mercedes C250 Sports

1 Coupe in 2012. Although he does not recall the specifics of the many Mercedes
2 advertisements he saw before he purchased his Sports Coupe, he does recall that
3 state-of-the-art engineering and a comfortable interior were frequent themes across
4 the advertisements he saw. Those advertisements about state-of-the-art engineering
5 and a comfortable interior influenced his decision to purchase his vehicle. Had
6 those advertisements or any other Mercedes materials disclosed to Mr. Amin that
7 the Class Vehicles had defective HVAC Systems, or that he would have to pay for
8 repairs/replacement of the HVAC system and/or air filtration system, he would not
9 have purchased his Class Vehicle, or would not have purchased it at the price paid.

10 58. On January 29, 2016 Mr. Amin, through counsel, sent Mercedes
11 a letter sent pursuant to the Georgia Fair Business Practices Act, O.C.G.A. § 10-1-
12 390, et. seq., requesting relief and repair of the defects exhibited in Class Vehicles
13 for Mr. Amin and others similarly situated; to which Mercedes responded through
14 counsel denying the existence of any defect, failing to offer to repair Mr. Amin or
15 anyone else's vehicles, failing to compensate out-of-pocket expenses for those who
16 have incurred them, and failing to guarantee to honor claims for this defect going
17 forward, and only offering a small sum to resolve his claim alone. Further,
18 Mercedes alleges the complained of problems to be "a maintenance issue"
19 presumably implying that all purchasers who have experienced foul odors have
20 failed to properly maintain their Class Vehicles. Mr. Amin found this response from
21 Mercedes to be an unsatisfactory response to his request for relief.

22 Plaintiff Trushar Patel

23 59. Plaintiff Trushar Patel resides in Johns Creek, Georgia.

24 60. Dr. Patel owns a 2014 Mercedes E350 Sedan, which he
25 purchased new on January 16, 2015, from Mercedes-Benz of Buckhead in Atlanta,
26 Georgia, along with a Mercedes Pre-Paid Service Plan.
27
28

1 61. Dr. Patel's Class Vehicle was manufactured, sold, distributed,
2 advertised, marketed, and warranted by Mercedes, and bears the Vehicle
3 Identification No. WDDHF5KBXEA997500.

4 62. Dr. Patel purchased the Class Vehicle for his personal, family,
5 and household use.

6 63. Dr. Patel expected his Class Vehicle to be of good and
7 merchantable quality and not defective. He had no reason to know of, or expect,
8 that mold would develop in his vehicle's HVAC System, nor was he aware from
9 any source prior to purchase of the unexpected, extraordinary, and costly
10 maintenance steps Mercedes suggests are necessary to prevent its development.
11 Had he known these facts, he would not have bought his Class Vehicle or would
12 have paid less for it.

13 64. Dr. Patel first experienced a noxious, pungent, sour, musty odor
14 caused by the HVAC System in approximately March or April 2015.

15 65. Since that time, the noxious odor has continued unabated. The
16 HVAC system emits the odor when the vehicle's climate control system is first
17 engaged and generally persists.

18 66. The strength of the odor intensifies after any periods of rain.

19 67. At its very first service "Service A", Dr. Patel explained the
20 problem of a smell that is quite often "ripe" to his service advisor at Mercedes-Benz
21 of Buckhead. Although Dr. Patel reasonably believed that the repair would be
22 covered under the warranty and/or his prepaid service plan, the authorized
23 Mercedes dealer claimed that the filter needed replacing at a cost of \$185 to Dr.
24 Patel. When Dr. Patel inquired as to why the filter needed replacement so soon, he
25 was advised that the filter required replacement every year. Dr. Patel explained that
26 the vehicle was only purchased and in use since January and shouldn't require a
27 filter that soon. The service advisor told Dr. Patel that the remedy was not covered
28

1 by his prepaid service or warranty and that the filter would only be replaced in the
2 next service “Service B.”

3 68. Prior to this purchase, Dr. Patel had previously purchased and
4 owned Mercedes vehicles but did not experience any odor issues with those
5 vehicles.

6 69. Prior to this purchase, Dr. Patel was not advised of the Defect
7 and tendency, known by Mercedes, of his new vehicle to emit noxious odors prior
8 to purchasing it. He relied upon Mercedes’ assertions of the capabilities and
9 comfort of his new vehicle via salesmen and brochures and ads. He also reasonably
10 expected that Mercedes would stand behind its products and claims for warranty
11 benefits by a long-time and repeat customer – especially when the problem/defect
12 manifested within a few months of a new vehicle’s purchase. Dr. Patel reasonably
13 expected to receive a vehicle with state-of-the-art engineering and a comfortable
14 interior. Advertisements about state-of-the-art engineering and a comfortable
15 interior, recommendations and personal experience with his Mercedes dealer
16 influenced his decision to purchase his vehicle. Had those advertisements or any
17 other Mercedes materials or personnel disclosed to Dr. Patel the nature of the defect
18 in the Class Vehicle’s HVAC Systems, or that he would have to pay for
19 repairs/replacement of the HVAC system and/or air filtration system, he would not
20 have purchased his Class Vehicle, or would not have purchased it at the price paid.

21 70. For further peace-of-mind with his new purchase, Dr. Patel
22 purchased an additional Mercedes Pre-Paid Service Plan with his vehicle. He
23 expected piece-of-mind and protection against surprise billings or expenses. The
24 Plan documents stated “you don’t have to worry about any unexpected bills. This
25 frees you from additional workshop costs as unexpected repairs, maintenance or
26 wear parts are already covered, depending on the specific service contract*. You
27 therefore don’t have to worry about workshop bills and your Mercedes remains in
28 top condition. With the service contract you will always receive Mercedes-

1 Benz quality – with the service of our qualified workshop specialists and Mercedes-
2 Benz Genuine Parts.”

3 71. Because of the foul odors, Dr. Patel’s enjoyment and use of the
4 vehicle were and are curtailed. He is forced to leave his windows open to vent the
5 vehicle whenever reasonably possible. He avoids parking in open areas where rain
6 could fall on the vehicle and exacerbate the odors. He unsuccessfully attempted to
7 mitigate the odors by adjusting HVAC settings to try and find an acceptable level
8 that would not release odors. Dr. Patel purchased and installed air fresheners at an
9 estimated cost of \$25.00 to attempt to mask the smell. He and his family were
10 forced to endure unpleasant smells in a brand new vehicle almost from the onset of
11 its use.

12 Defendant Mercedes-Benz

13 72. Defendant MERCEDES-BENZ is a Delaware corporation with
14 its principal place of business in Montvale, NJ.

15 73. At all times relevant herein, MERCEDES-BENZ engaged in the
16 business of designing, manufacturing, constructing, assembling, marketing,
17 warranting, distributing, selling, leasing, and servicing automobiles, including the
18 Class Vehicles, and other motor vehicles and motor vehicle components throughout
19 the United States.

20 **JURISDICTION**

21 74. This Court has diversity jurisdiction over this action under 28
22 U.S.C. §§ 1332(a) and (d) because the amount in controversy for the Class exceeds
23 \$5,000,000, and Plaintiffs and other Class Members are citizens of a different state
24 than Defendant.

25 75. This Court has personal jurisdiction over Mercedes because
26 Mercedes is authorized to do business in California, Mercedes conducts substantial
27 business in this District, some of the actions giving rise to the complaint took place
28 in this District, Mercedes has minimum contacts with California, and/or Mercedes

1 otherwise intentionally avails itself of the markets in California through the
2 promotion, marketing, and sale of its products in California, each of which are
3 sufficient bases to render the exercise of jurisdiction by this Court permissible
4 under traditional notions of fair play and substantial justice. This Court also has
5 personal jurisdiction over Mercedes under 18 U.S.C. § 1965 because Mercedes is
6 found in, has an agent in, or transacts business in this District.

7 VENUE

8 76. Venue is proper in this District under 28 U.S.C. § 1391 because
9 Mercedes, as a corporation, is deemed to reside in any judicial district in which it is
10 subject to personal jurisdiction. Additionally, Mercedes transacts business within
11 the District, and some of the events establishing the claims arose in this District.

12 77. Plaintiffs' venue declarations pursuant to Cal. Civ. Code
13 § 1780(d) are attached hereto as Exhibits A and B.

14 APPLICABLE LAW

15 78. Plaintiffs, who assert their claims against MERCEDES-BENZ, a
16 New Jersey Corporation, seek damages and equitable relief on behalf of themselves
17 and all other persons and entities similarly situated, under the laws of California
18 and/or Georgia and/or New Jersey, or under the law of all states that are
19 substantially similar.

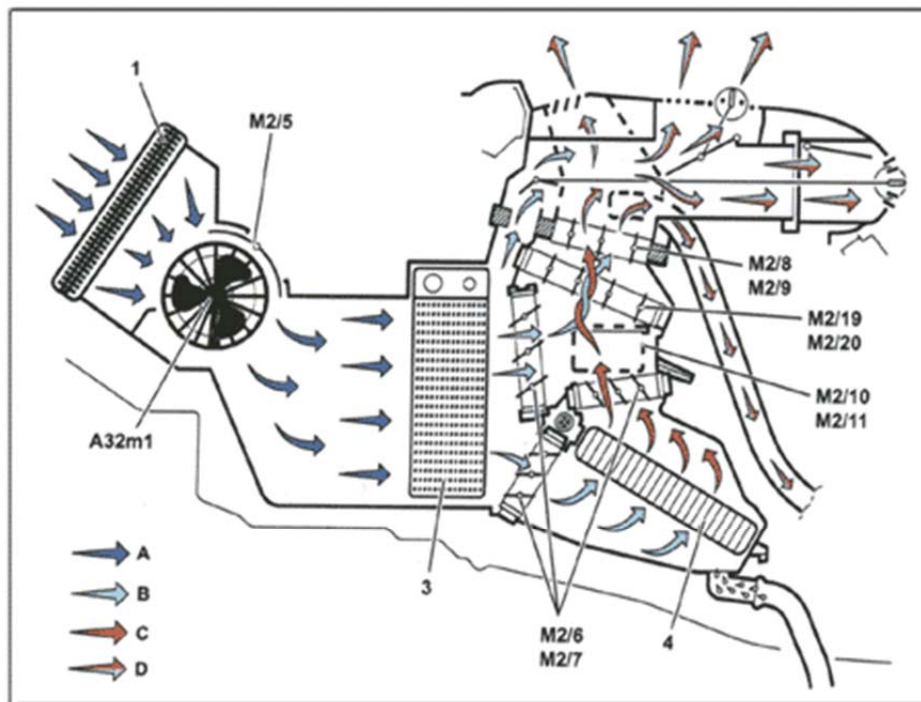
20 79. California has a materially greater interest than any other State
21 in enforcing the rights and remedies granted to consumers under the California laws
22 invoked in this Complaint. These rights and remedies further strong fundamental
23 public policies of the State of California.

24 80. As an alternative to the application of California law to a
25 nationwide class, for those Class members who reside in states whose laws do not
26 materially conflict with California law with respect to the claims and facts alleged
27 here, the Court can and should apply California law to those Class members'
28 claims.

FACTUAL ALLEGATIONS

81. Plaintiffs bring this action for themselves and on behalf of all Class Members. Plaintiffs are informed and believe that, because of the HVAC System Defect, the HVAC Systems in the Class Vehicles are predisposed to produce a moldy odor under normal use conditions that would not cause non-defective HVAC Systems to produce a moldy odor, compromising the comfort and enjoyment of vehicle occupants, including Class Members, and requiring them to pay for repeated nonpermanent “fixes” including replacements of the cabin air filter and “flushing the system” with disinfectant spray.

82. The diagram below illustrates the components and functioning of the HVAC systems:



1	Dust filter	D	Blended air
3	Evaporator	M2/5	Fresh air/recirculated air flaps actuator motor
4	Heater core	M2/6	Left blended air flap actuator
A	Fresh air or recirculated air	M2/7	Right blended air flap actuator
A32m1	Blower motor	M2/15	Left and right foot well flaps actuator
B	Cooled air	M2/16	Left and right defroster flaps actuator
C	Heated air	M2/21	Fresh air flaps actuator

1 83. As a vehicle's HVAC system cools air, condensation forms on a
2 component called an evaporator (labeled 3 in the diagram above). In a non-
3 defective system, this condensation is evaporated through the activation of a fan
4 and airflow over the evaporator.

5 84. On information and belief, condensation that builds on the
6 evaporator and elsewhere within the Class Vehicles' HVAC systems is never
7 properly and fully evaporated. This residual moisture provides a haven for the
8 growth of mold and mildew as spores enter the system through outside vents.

9 85. Based on preliminary investigation and inspection, due to the
10 Defect, several mold species, including Aspergillus/Penicillium, Ascospores, and
11 Smut/Periconia/Myxomy, are present in the evaporator of Class Vehicles. Said
12 molds are known to secrete mycotoxins such as Patulin, creating and contributing
13 to the foul odors experienced by Plaintiffs and Class Members.

14 86. Mycotoxins are toxic to human and animals and known to cause
15 some or all of the following: allergic reactions, infections, cellular damage, DNA
16 damage, interference with RNA synthesis, inflammation, gastroenteritis, and other
17 harmful effects.

18 87. Mercedes knew or should have known that having a damp,
19 poorly draining, component which could promote the growth of mold, could result
20 in or at least promote, reactions, diseases, symptoms, or complications in
21 passengers of Class Vehicles, presenting a risk to their health and safety, especially
22 when the growth is in the airway to a tightly sealed and enclosed space containing
23 one or more human beings and animals.

24 88. Over time, the mold/mildew/fungus growing in the evaporator
25 can spread, resulting in reduced HVAC System efficiency, while also becoming
26 more difficult to remove and requiring evaporator replacement in some instances.

89. Moreover, the tightly sealed and enclosed passenger compartment could cause concentration levels of toxic smells and chemicals to become much higher than in larger and less tightly sealed spaces.

90. Replacing the filter is not a fix for the Defect because the filter is “upstream” from the evaporator.

91. The Class Vehicles at issue in this action include the 2008-2016 Mercedes C-Class, 2013-2016 Mercedes CLA-Class, 2003-2009 Mercedes CLK-Class, 2004-2016 Mercedes CLS-Class, 2003-2016 Mercedes E-Class, 2007-2016 Mercedes GL-Class, 2010-2016 Mercedes GLK-Class, 2006-2016 Mercedes M-Class, 2006-2015 Mercedes R-Class, 2006-2016 Mercedes S-Class, 2003-2012 Mercedes SL-Class, and 2004-2010 Mercedes SLK-Class (the “Class Vehicles”).²

92. Plaintiffs reserve the right to amend the definition of “Class Vehicles,” should further discovery reveal that additional models and model-years are affected by the HVAC System Defect.

A. Mercedes Knew of the HVAC System Defect Prior to Sale or Lease of the Class Vehicles

93. On information and belief, Mercedes learned of the HVAC System Defect at least as early as 2008, and certainly well before Plaintiffs and Class Members purchased or leased their Class Vehicles, through sources such as arbitration actions; repair data; replacement part sales data; early consumer complaints made directly to Mercedes, collected by NHTSA ODI, and/or posted on public online vehicle owner forums; testing done in response to those complaints; aggregate data from Mercedes dealers; as well as through other internal sources unavailable to Plaintiffs prior to discovery.

² Discovery will enable Plaintiffs to more precisely determine which model-years share the same defective HVAC System design.

1 **B. Mercedes Was Directly Made Aware of the Defect Via a Successful**
2 **Consumer Arbitration Action Brought Against It**

3 94. Mercedes learned of the HVAC System Defect at least as early
4 as 2008, when a Class Vehicle owner brought – and won – a consumer arbitration
5 action against Mercedes for the Defect.

6 95. The following is a synopsis of the Florida Consumer Complaint
7 and Arbitration decision rendered against Mercedes in *Fattah v. Mercedes-Benz*
8 *USA, Inc.*, 2008-0441/MIA (Fla. NMVAB November 14, 2008):

9 The Consumer complained of a foul musty odor coming
10 from the air conditioner vents in her 2007 Mercedes
11 C230. The Consumer testified that the severity of the odor
12 had reduced; however, the odor still existed. The
13 Manufacturer contended that the alleged defect did not
14 substantially impair the use, value or safety of the vehicle.
15 While not denying the existence of the odor, the
16 Manufacturer asserted that outside elements and humid
17 South Florida temperatures contributed to the odor. The
18 Board rejected the Manufacturer's argument and found
19 that the odor substantially impaired the use, value and
20 safety of the vehicle. Accordingly, the Consumer was
21 awarded a refund.³

22 96. During the arbitration hearing, Mercedes was represented by
23 counsel, a Mercedes-Benz USA representative out of the Montvale, NJ,
24 headquarters, a Mercedes-Benz USA Technical Specialist for the South Florida
25 region, and the Service Manager at the dealership the consumer had visited
26 complaining about the odor.

27 97. Mercedes described the HVAC Defect during the hearing: "The
28 system works in such a way that it will – the AC is supposed to get rid of all the
humidity from the air, ok? And in some cases, you know, where you shut the car
off, some water will remain in the evaporator ... what happens is it will accumulate

³ Office of the Florida Attorney General, Florida New Motor Vehicle Arbitration Board Quarterly Case Summary for 4th Quarter (October 2008 - December 2008), available at [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7SAJZG/\\$file/Oct-Dec08.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7SAJZG/$file/Oct-Dec08.pdf).

1 there. It will not fully drain.” Mercedes went on to say that the water that
2 accumulates is what ultimately leads to the moldy odor.

3 98. Under questioning from the Arbitration Board, Mercedes
4 admitted that as long as the consumer keeps the car, she’s going to have to keep
5 getting Mercedes temporary “fix”, which one Board member called “a band-aid.”

6 99. During deliberation, the Board found:

7 The issue with the vehicle is that it’s got a musty smell, Mercedes
8 knows about it, they have a technical service bulletin to address it, so
9 apparently they’ve had enough complaints on this where it rose to the
10 level of having to deal with it. The way they deal with it is they use
11 the disinfectant to clean, and if you read the TSB, you’ve got to get in
12 there and make sure you clean the whole evaporator as much as
13 possible ... Mercedes has admitted that, yeah, there is a problem, that
14 this is the best they know how to fix it. ... So nothing that they’ve
15 done has made the smell completely disappear.

16 ...

17 You know, that’s one way to look at it in terms of how strong the odor
18 is. Another way to look at it is that the cure doesn’t work. And this is
19 going to be with her and the vehicle for as long as she has the vehicle.
20 That’s the way it looks, because she’s coming back in and that’s why I
21 was questioning him, because I wanted to see if they found the
22 problem and here’s the solution to the problem. There is no real
23 solution. In other words, they haven’t come up with anything to say, I
24 mean, change this and there’s not going to be anymore accumulation
25 of water and, in fact, in other models, from what he’s saying, they
26 don’t have that problem because whatever the engineering is, it
27 prevents it. And on this model, it’s not there. So, you know, it’s sort
28 of like a defect, which they are trying to deal with, and they can’t
really deal with it in all the cases.

...

there’s really not a fix for the vehicle. And there shouldn’t be a smell
to the vehicle. This is a vehicle that, to me, the fact that the smell
persists is substantial in itself. I think that this is a substantial problem
that this vehicle has with this smell. It’s not going to go away.
There’s nothing you can do that’s going to say we’re going to
eliminate the smell in this car. It’s just not gonna happen. There’s no

1 remedy to get rid of the smell, period. We're going to do this and it's
 2 going to fix it. And I have a problem with that. ... it's just a design
 3 problem issue

4 100. Mercedes knew or should have known of the HVAC Defect
 5 from at least as early as this arbitration hearing in 2008.

6 **C. Mercedes's Knowledge of the HVAC System Defect from Dealer**
Technical Bulletins

7 101. Mercedes's knowledge of the HVAC System Defect is
 8 demonstrated by Dealer Technical Bulletins issued by Mercedes concerning the
 9 Defect.

10 102. Upon information and belief, Mercedes issued Dealer Technical
 11 Bulletins to its dealerships and service centers describing the HVAC System Defect
 12 (or the moldy smell consumers were complaining about) and informing service
 13 technicians of the temporary "fix" Mercedes was offering.

14 **D. Mercedes's Knowledge of the HVAC System Defect from Repair**
Data

15 103. Mercedes also knew or should have known about the HVAC
 16 System Defect because of the large number of HVAC System repairs and Cabin Air
 17 Filter replacements made during the Class Vehicles' warranty periods.

18 104. Upon information and belief, Mercedes collects, reviews, and
 19 analyzes detailed information about repairs made on vehicles still under warranty at
 20 its dealerships and service centers, including the type and frequency of such
 21 repairs.⁴ Complete data on such repairs is exclusively within Mercedes's control
 22 and unavailable to Plaintiffs without discovery.
 23
 24
 25
 26

27 ⁴ For example, in the *Fattah* arbitration hearing, Mercedes-Benz counsel testified
 28 that Mercedes received a "motor vehicle defect notification" after at least three
 repairs for the HVAC System odor.

1 **E. Mercedes's Knowledge of the HVAC System Defect Gathered**
 2 **from the Large Number of Replacement Cabin Air Filters**
 3 **Ordered from Mercedes**

4 105. Upon information and belief, Mercedes also knew or should
 5 have known about the HVAC System Defect because of the higher than expected
 6 number of replacement cabin air filters ordered from Mercedes, which should have
 7 alerted Mercedes that this was a Defect affecting a wide range of its vehicles.

8 106. Upon information and belief, Mercedes service centers use
 9 Mercedes replacement parts that they order directly from Mercedes. Therefore
 10 Mercedes would have detailed and accurate data regarding the number and
 11 frequency of replacement part orders, including replacement Cabin Air Filters. The
 12 ongoing high sales of replacement cabin air filters was (or should have been)
 13 known to Mercedes, and alerted Mercedes that its HVAC Systems were defective
 14 and causing Class Vehicles' Air Conditioning systems to emit moldy odors
 frequently and consistently.

15 **F. Mercedes's Knowledge of the HVAC System Defect Gained From**
 16 **Class Member Complaints Made Directly To Mercedes**

17 107. Mercedes also knew or should have known about the HVAC
 18 System Defect because numerous consumer complaints regarding failures of the
 19 HVAC System were made directly to Mercedes. The large number of complaints,
 20 and the consistency of their descriptions of the HVAC System Defect and the mold
 21 formation and foul, noxious odors it caused in the Class Vehicles, alerted Mercedes
 22 to this serious defect affecting a wide range of its vehicles.

23 108. The full universe of complaints made directly to Mercedes about
 24 the HVAC System Defect is information presently in the exclusive custody and
 25 control of Mercedes and is not yet available to Plaintiffs prior to discovery.
 26 However, upon information and belief, many Class Vehicle owners complained
 27 directly to Mercedes and Mercedes dealerships about the repeated HVAC System
 28 failures their vehicles experienced. For example, some instances of these direct-to-

Mercedes complaints are described in Class Vehicle owners' complaints logged with NHTSA ODI and posted on online vehicle owner forums:

- "MY CAR SMELLS LIKE MILDEW AND MOLDY. I HAVE TAKEN IT TO THE DEALER ABOUT 3 TIMES ABOUT THIS SITUATION. I HAVE RESPIRATORY PROBLEMS AND ALLERGIES AND I CAN HARDLY USED THIS CAR, IT STINKS AND BOTHERS MY BREATHING" Complaint in NHTSA ODI database, ODI ID No. 10342816, date of incident October 28, 2008.

- Took my 09 C300 in to MB for a moldy smell. Wife just called and said they want \$155.00. Car has 24,000 on it. Question shouldn't this be covered under warranty?" <http://www.benzworld.org/forums/> (posted on March 2011)

- "I have a 2006 E350 that has developed a noticeable musty/mold smell emitting from the a/c system. Car is under warranty, dealership is just changing parts in hopes of stumbling across the problem. To date they have changed the cabin air filter and done the service bulletin on system clean-out, replaced the condenser Anyway, now I notice a distinct mold smell coming from the front, outside area of the car when it's parked in the garage. I have been on my knees crawling all around the car and cannot nail the source. The dealership service writer is useless as I probably could leave a voicemail for the mechanic and probably do better. Car always garaged in Palm Beach area. Any clues? Thanks." peachparts.com (posted April 2007).

109. As the above sampling of complaints shows, Class Members have been vocal in complaining directly to Mercedes about the HVAC System Defect, and the number and consistency of their complaints should have alerted Mercedes about the HVAC System Defect.

G. Mercedes's Knowledge of the HVAC System Defect From Class Member Complaints Collected by NHTSA's Office of Defect Investigations

110. In addition to complaints made directly to Mercedes, many Class Vehicle owners lodged complaints about the HVAC System Defect with

1 NHTSA's Office of Defect Investigations ("NHTSA ODI"), beginning as early as
 2 2008, and certainly well before Plaintiffs and Class Members purchased or leased
 3 their Class Vehicles.

4 111. Federal law requires automakers like Mercedes to be in close
 5 contact with NHTSA regarding potential auto defects, including imposing a legal
 6 requirement, backed by criminal penalties for violation, of confidential disclosure
 7 of defects by automakers to NHTSA, including field reports, customer complaints,
 8 and warranty data. *See* TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

9 112. Thus automakers should (and do) monitor NHTSA databases for
 10 consumer complaints regarding their automobiles as part of the automakers ongoing
 11 obligation to identify potential defects in their vehicles, including design-related
 12 defects, such as failures of HVAC Systems to filter and emit mold- and odor-free
 13 air as intended.

14 113. From its monitoring of the NHTSA databases, Mercedes knew
 15 or should have known of the many complaints about HVAC System failure logged
 16 by NHTSA ODI, and the content, consistency, and large number of those
 17 complaints alerted, or should have alerted, Mercedes to the HVAC System Defect.

18 114. NHTSA's publicly available ODI database contains only
 19 complaints made in the past five years on its website; thus complaints made before
 20 2008 are not readily accessible. Mercedes, however, had contemporaneous and on-
 21 going access to the NHTSA consumer complaint data and that information cannot
 22 be obtained by Plaintiffs without discovery. A sampling of the publicly available
 23 complaints lodged with NHTSA ODI, however, includes those quoted in paragraph
 24 ¶¶ 108, as well as the following:

25 • "MOLDS AND MILDEW BUILD UP IN THE AIR CONDITION DUCTS
 26 PLACING PEOPLE WHO ARE SUSCEPTIBLE FOR INFECTION (PEOPLE
 27 WITH WEAK IMMUNE SYSTEM) AT RISK FOR FATAL INFECTION. THE
 28 DEALER STATED THAT THIS IS A KNOWN AND COMMON CONDITION

1 FOR THIS CAR BECAUSE THE AC BOX DOES NOT DRAIN THE
 2 CONDENSED WATER. THIS IS BECAUSE THE WAY THE CAR WAS
 3 DESIGNED. THE DEALER RECOMMENDED TURNING OFF THE AC FOR
 4 30 SECONDS WHILE KEEPING JUST THE FAN ON EVERY TIME BEFORE
 5 TURNING OFF THE CAR TO DRY UP THE CONDENSED WATER ON THE
 6 AC COILS, NOT PRACTICAL. THE DEALER HAS A KNOWN SERVICE TO
 7 DISINFECT THE AC SYSTEM BUT BECAUSE OF THE CAR DESIGN
 8 COULD NOT GUARANTEE THAT THE CONDITION WILL NOT RETURN.
 9 THERE IS NO WARNING OR ANY INSTRUCTIONS IN THE MANUAL
 10 REGARDING THIS POTENTIALLY FATAL CONDITION FOR SUSCEPTIBLE
 11 PEOPLE.” Complaint in NHTSA ODI database, ODI ID No. 1065573, date of
 12 incident July 12, 2014.

13 • “MY CAR SMELLS LIKE MILDEW AND MOLDY. I HAVE TAKEN IT
 14 TO THE DEALER ABOUT 3 TIMES ABOUT THIS SITUATION. I HAVE
 15 RESPIRATORY PROBLEMS AND ALLERGIES AND I CAN HARDLY USED
 16 THIS CAR, IT STINKS AND BOTHERS MY BREATHING” Complaint in
 17 NHTSA ODI database, ODI ID No. 10342816, date of incident October 28, 2008.

18 115. As the above sampling of complaints makes clear, Class
 19 Members have been vocal in complaining to NHTSA ODI about the HVAC System
 20 Defect since at least 2008, and Mercedes was, or should have been, aware of and
 21 monitoring those complaints, and thus should have known about the HVAC System
 22 Defect since at least 2008, and certainly well before Plaintiffs and Class Members
 23 purchased or leased their Class Vehicles.

24 **H. Mercedes’s Knowledge of the HVAC System Defect Gleaned From**
 25 **Class Member Complaints on Public Online Forums**

26 116. In addition to complaints made directly to Mercedes and
 27 collected by NHTSA ODI, many Class Vehicle owners posted complaints about the
 28

1 HVAC System Defect on public online vehicle owner forums. The following is a
2 small sampling of such complaints:

3 117. "Took my 09 C300 in to MB for a moldy smell. Wife just called
4 and said they want \$155.00. Car has 24,000 on it. Question shouldn't this be
5 covered under warranty?" <http://www.benzworld.org/forums/> (posted on March
6 2011)

7 • "Definitely a strong odor coming from the HVAC system that makes it a
8 little embarrassing to have others ride along in your "luxury" automobile. Any
9 advice on how to completely correct this would be appreciated."

10 www.repairpal.com

11 • "Crayon type smell in the HVAC system that is so pungent that the wife can't
12 even stand to be in the car." www.repairpal.com

13 • "I have noticed a very bad or mushy smell when I start my car with A/C off(
14 after I have shut the car for sometime and the AC was running when i shut the car).
15 This gets better in 10-15 seconds after I turn the AC on. The smell is a very strong
16 smell of moisture with stagnant air.... Does anyone have the same experience? I
17 am worried as it might be a problem with my cabin air filter. My car is only
18 3000miles on it. Thanks" <http://mbworld.org/forums/> (posted on March 2012).

19 • "Whenever i turn the air on, the first 30 seconds it smells really bad, i have to
20 pen the windows till it clears out. I checked all the filters already. Any idea how can
21 i make it smell nice/normal?? thnx alot,Lina." Answers.yahoo.com (posted 2007).

22 • "My wife complained that our 2014 S550 also had musty dirty socks smell 7
23 months after purchase. I confirmed the smell and my wife's multiple friends
24 confirmed the "sour stinking socks smell". I took the car (S550) to the FJ Newport
25 but they say unable to confirm the smell and told us to pick up the car. They also
26 say that they don't have any known problem with 2014 S550 and further say that
27 the advisor is told to not take the car in the shop unless they can verify the smell. I
28

1 guess all dealer techs are very insensitive to smells.^ So we had to pick up the car
2 and bring the car back home. We stopped driving the S550 for a while (weeks) until
3 we are sure of mold free. Because both my wife and I have a certain genetic
4 marker and also have compromised auto immune system and we cannot deal with
5 any mold issue if there exists. Mbworld.org (posted December 2014)

6 • “My problem concerns a 2001 C320 with 60,000 miles. The climate control
7 emits a extremely musty sower smell from the air vents when the vehicle is first
8 started with the AC on. I presume the air ducts are clear of anything that might
9 smell as the smell is absent when in the heat mode. I have wondered if the problem
10 might be related to the AC charging system, receiver/drier, or a condensation drain
11 tube etc. I know little or nothing about my MB AC. Any thoughts or advice are
12 appreciated before I start dismantling & throw parts at it.” www.mbca.org (posted
13 October 2004).

14 • “I have a 2006 E350 that has developed a noticeable musty/mold smell
15 emitting from the a/c system. Car is under warranty, dealership is just changing
16 parts in hopes of stumbling across the problem. To date they have changed the
17 cabin air filter and done the service bulletin on system clean-out, replaced the
18 condenser (left out some MAJOR, blue, 12 point bolts found under the mat). All
19 seat bolts are installed and are black in color. Anyway, now I notice a distinct mold
20 smell coming from the front, outside area of the car when it's parked in the garage. I
21 have been on my knees crawling all around the car and cannot nail the source. The
22 dealership service writer is useless as I probably could leave a voicemail for the
23 mechanic and probably do better. Car always garaged in Palm Beach area. Any
24 clues? Thanks.” peachparts.com (posted April 2007).

25 • “I am going to start this by copying the information that I sent to the Nevada
26 DMW and to Mercedes corporate as well as the dealership. Mercedes WILL NOT
27 respond to our complaints and neither will the dealership. Here is a background on
28

1 this terrible car that is a big waste of money! We purchased the vehicle on
2 December 3, 2011. On December 20, 2011, with only 648 miles on the vehicle, the
3 vehicle had to be towed out of our garage due to an issue with the transmission. The
4 transmission gave out. Had to be reassembled. On May 2, 2012, with 4,280 miles
5 on the vehicle, we brought it in because of a terrible moldy, wet smell coming from
6 the air vents. The air filter was removed, replaced and was put into the blowers. The
7 AC system was also revitalized. The smell came back within two days. The
8 dealership did not fix this problem.” Forum.edmunds.com (posted February 2013).

9 • “Visitor, 2006 Mercedes-Benz C230, 45,000 mi. Smelly mildew hvac.”
10 Forum repairpal.com/mildew-in-heater-box-403

11 • “The heating, ventilation and AC (HVAC) heater box is susceptible to
12 mildew buildup. This can result in a musty odor from the HVAC system, most
13 noticeable when the system is first turned on.” Forum repairpal.com/mildew-in-
14 heater-box-403

15
16 • “We just dropped our 2015 ML 350 off at the dealership due to an extreme
17 vinegar emmis[s]ion from the ac. The tech said it will be \$330 to clean/flush and
18 replace the filter as this issue is NOT covered under the bumper to bumper
19 war[r]anty. Its a very common problem, apparently, as he gave us his very
20 "rehearsed" answer as to why this happens. (The condensation has nowhere to
21 escape and becomes moldy). He suggested we park it on a slope and that we should
22 turn off the ac 5 mins before we arrive at our destination !

23 I dont think that we should have to babysit the ac in a luxury car! He also said that
24 ALL luxury cars have this issue. Well, we've owned Audi's, BMW's and Lexus
25 products all with NO ac issues. So I'm calling BS on Mercedes and I believe that
26 they have know about this issue for years and should be including this service cost
27
28

1 in the warranty. Plus, from what I've read this will happen often, its not a 1 time
2 fix.” Bbenzworld.org (posted February 2016)

3
4 118. As shown by this small sampling of complaints from websites
5 such as www.mbworld.com, www.benzworld.com, www.repairpal.com,
6 www.answers.yahoo.com, www.mbca.org, www.edmunds.com, and repairpal.com
7 consumers have been vocal in complaining about the HVAC System Defects and
8 the damage being caused by these Defects. A multi-billion dollar vehicle
9 manufacturing company such as Mercedes undoubtedly had and has a marketing
10 department that tracks such sites and should reasonably have been aware of the
11 HVAC System Defect in the Class Vehicles.

12 119. In sum, as early as 2008, and certainly well before Plaintiffs and
13 Class Members purchased or leased their Class Vehicles, Mercedes was aware of
14 the HVAC System Defect, should have been aware of the HVAC System Defect
15 through the exercise of reasonable care, and/or was negligent in failing to be aware
16 of the HVAC System Defect, based on, among others, the following sources:

- 17 a. Arbitration action against Mercedes related to the Defect;
- 18 b. Detailed data gathered by Mercedes about large number of
19 HVAC System Defect repairs;
- 20 c. Knowledge Mercedes had of the large number of replacement
21 HVAC Systems ordered from Mercedes;
- 22 d. Numerous and consistent vehicle owner complaints made
23 directly to Mercedes about the HVAC System Defect;
- 24 e. Numerous and consistent vehicle owner complaints collected by
25 NHTSA ODI about the HVAC System Defect;
- 26 f. Numerous and consistent vehicle owner complaints made on
27 online vehicle owner forums;
- 28

1 Warranty extend coverage to the climate control system, which includes the HVAC
2 system.

3 123. Based on Plaintiffs' experiences and reports from other
4 consumers, Mercedes refuses to cover the nonpermanent "fixes" (changing the filter
5 and flushing the System) under warranty, and instead requires Class Members pay
6 out of pocket for these nonpermanent "fixes" for the HVAC System Defect even if
7 Class Members' vehicle remained under warranty at the time.

8 **Mercedes's Marketing and Concealment**

9 124. Upon information and belief, Mercedes knowingly
10 manufactured and sold the Class Vehicles with the HVAC System Defect, while
11 willfully concealing the true inferior quality and sub-standard performance of the
12 Class Vehicles HVAC Systems.

13 125. Mercedes directly markets the Class Vehicles to consumers via
14 extensive nationwide, multimedia advertising campaigns on television, the Internet,
15 billboards, print publications, mailings, and through other mass media.

16 126. Mercedes's marketing material describes the various Class
17 Vehicles as "state-of-the-art," "luxury," "fine craftsmanship," and "the most
18 advanced vehicles on the road." Mercedes slogan for its vehicles is "the best or
19 nothing."

20 127. Although Mercedes knew of the need to disinfect the climate
21 control systems in Class Vehicles to mitigate the growth of Mold and curb foul
22 odors, it failed to notify Plaintiff's and Class Members of this requirement prior to
23 their purchase of the vehicle. Thus, misrepresenting the maintenance requirements
24 of Class Vehicles.

25 128. Mercedes also touts "a rigorous 27-point service checklist to
26 keep your Mercedes-Benz running effortlessly for the next 10,000," implying that
27 Class Vehicles will require less-frequent maintenance than other vehicles. This 27-
28

1 point service checklist includes pre-road test checks of the air cleaner/filter and
2 climate control system.

3 129. Mercedes marketing materials advertised the vehicles as
4 'enjoyable' to 'everyone' and 'soothing' and "filters dust and pollen as small as
5 0.0002" from the air. It also promoted videos stating its vehicles are "engineering
6 excellence" and "an automotive masterpiece." Furthermore, it stated, "Soothing.
7 Standard dual-zone automatic climate control allows the driver and front passenger
8 to enjoy individualized comfort in any season. The system filters dust and pollen
9 from the cabin, while a sensor monitors the angle and intensity of sunlight for more
10 even control of temperature." This led Plaintiffs and Class Members to form a
11 reasonable belief and expectation that mold/mildew and foul smells would not
12 emanate from the vehicle if contained in the air and certainly caused the reasonable
13 consumer not to expect that the vehicle itself would harbor and facilitate the growth
14 of organic materials regularly giving rise to foul odors making the use of Class
15 Vehicles anything but soothing or enjoyable.

16 130. Further, Mercedes represents that its Certified Pre Owned
17 vehicles must "meet stringent criteria and pass a rigorous inspection." This
18 certification process involves a 164-point inspection, which includes a test of
19 "Automatic Climate Control Function, Regulation, Display, Odors." Mercedes
20 promises that CPO vehicle purchasers "get industry-leading coverage."

21 131. According to its consumer brochures, "[t]he Mercedes-Benz
22 Certified Pre Owned vehicle offers safety, performance and reliability." Vehicles
23 that have been Certified Pre-Owned purportedly have passed a thorough
24 certification inspection. According to its CPO consumer brochure, all Mercedes
25 CPO vehicles undergo a "climate control inspection" during a road test conducted
26 by a Mercedes-Benz technician and "[a]ny noted deficiencies are repaired, replaced
27 or reconditioned" before the vehicle is sold.
28

1 132. In practice, the Class Vehicles are not as comfortable or
2 enjoyable as Mercedes's marketing suggests. Mercedes concealed the fact that the
3 so-called "Luxury" Class Vehicles, which supposedly are "the most advanced
4 vehicles on the road," are instead not even comfortable or enjoyable under ordinary
5 conditions because the HVAC Systems repeatedly and consistently emit foul moldy
6 odors into the passenger cabin.

7 133. Mercedes marketed Class Vehicles and Mercedes Pre Paid
8 Maintenance Plans with service intervals it knew or should have known that class
9 vehicles could not and were not capable of lasting the stated service intervals
10 without exhibiting foul odors or smells.

11 134. Plaintiffs and Class Members were exposed to Mercedes's long-
12 term, national, multimedia marketing campaign touting the supposed sophistication
13 and comfort of the Class Vehicles, and Class Members justifiably made their
14 decisions to purchase/lease their Class Vehicles based on Mercedes's misleading
15 marketing that concealed the true, defective nature of the Class Vehicles' HVAC
16 Systems.

17 135. Further, Mercedes knowingly misled Class Members about the
18 true, defective nature of the Class Vehicles. As detailed above, upon information
19 and belief, Mercedes has been aware of the HVAC System Defect since at least
20 2008, and certainly well before Plaintiffs and Class Members purchased or leased
21 their Class Vehicles, through arbitration action, the high number of HVAC System
22 repairs and replacement part sales, and the numerous and consistent complaints
23 about the HVAC System Defect made directly to Mercedes, collected by NHTSA
24 and posted in public online forums.

25 136. Despite Mercedes's knowledge of the Defect, Mercedes told
26 Class Members who called its customer service about the HVAC System Defect
27 that Mercedes had never heard of the problem before and that no others had
28 reported issues with their vehicles' HVAC Systems.

1 137. In sum, Mercedes has actively concealed the existence and
2 nature of the HVAC System Defect from Class Members since at least 2008 despite
3 its knowledge of the existence and pervasiveness of the HVAC System Defect, and
4 certainly well before Plaintiffs and Class Members purchased or leased their Class
5 Vehicles. Specifically, Mercedes has:

6 a. Failed to disclose, at and after the time of purchase, lease, and/or
7 repair, any and all known material defects of the Class Vehicles, including the
8 HVAC System Defect;

9 b. Failed to disclose, at and after the time of purchase, lease, and/or
10 repair, that the Class Vehicles' HVAC Systems were defective and not fit for their
11 intended purposes;

12 c. Failed to disclose, and actively concealed, the fact that the Class
13 Vehicles' HVAC Systems were defective, despite the fact that Mercedes learned of
14 the HVAC System Defect as early as 2008, and certainly well before Plaintiffs and
15 Class Members purchased or leased their Class Vehicles;

16 d. Failed to disclose, and actively concealed, the existence and
17 pervasiveness of the HVAC System Defect even when directly asked about it by
18 Class Members during communications with Mercedes, Mercedes Customer Care,
19 Mercedes dealerships, and Mercedes service centers;

20 e. Actively concealed the HVAC System Defect by forcing Class
21 Members to bear the cost of temporary "fixes" of replacing the Cabin Air Filter or
22 "flushing the system", while at the same time replacing cabin air filters at no (or
23 lower) cost for those who complained vocally and often, and calling these
24 "goodwill" replacements;

25 f. Actively concealed the HVAC System Defect by consistently
26 treating the mold and odors by replacing the cabin air filter while leaving the
27 defective HVAC Systems as is, so that the HVAC System Defect is not
28 permanently corrected in Class Members' vehicles, even though Class Members

1 were led to believe that the replacement had cured the moldy odor problem in their
2 vehicles; and

3 g. Actively concealed the HVAC System Defect by knowingly
4 selling and installing replacement cabin air filters in Class Members' vehicles,
5 while knowing and concealing that the replacements would likely soon exhibit the
6 mold formation and foul, noxious odors because the HVAC Systems, the source of
7 the mold and odors, remained defective, and that by only replacing the cabin air
8 filter, Mercedes forced Class Members to repeatedly repair their Class Vehicles.

9 138. By engaging in the conduct described above, Mercedes has
10 concealed, and continues to conceal, the HVAC System Defect from Class
11 Members. If Class Members had knowledge of the information Mercedes
12 concealed, they would have factored the existence of the HVAC System Defect into
13 their decision to purchase/lease (or not to purchase/lease) the Class Vehicles.

14 **Fraudulent Concealment Allegations**

15 139. Absent discovery, Plaintiffs are unaware of, and unable through
16 reasonable investigation to obtain, the true names and identities of those individuals
17 at Mercedes responsible for disseminating false and misleading marketing materials
18 regarding the Class Vehicles. Mercedes necessarily is in possession of all of this
19 information. Plaintiffs' claims arise out of Mercedes's fraudulent concealment of
20 the HVAC System Defect and the foul moldy air it causes, and its representations
21 about the quality, world-class quality, sophistication, state-of-the-art performance
22 and comfort of the Class Vehicles' HVAC Systems. To the extent that Plaintiffs'
23 claims arise from Mercedes's fraudulent concealment, there is no one document or
24 communication, and no one interaction, upon which Plaintiffs bases their claims.
25 Plaintiffs allege that at all relevant times, including specifically at the time they
26 purchased or leased their Class Vehicles, Mercedes knew, or was reckless in not
27 knowing, of the HVAC System Defect; Mercedes was under a duty to disclose the
28 Defect based upon its exclusive knowledge of it, its affirmative representations

1 about it, and its concealment of it; and Mercedes never disclosed the Defect to the
2 Plaintiffs or the public at any time or place or in any manner.

3 140. Plaintiffs make the following specific fraud allegations with as
4 much specificity as possible absent access to the information necessarily available
5 only to Mercedes:

6 a. **Who:** Mercedes actively concealed the HVAC System Defect
7 from Plaintiffs and Class Members while simultaneously touting the safety,
8 comfort, sophistication, and world-class quality of the Class Vehicles, as alleged in
9 paragraphs 124-138, above. Plaintiffs are unaware of, and therefore unable to
10 identify, the true names and identities of those specific individuals at Mercedes
11 responsible for such decisions.

12 b. **What:** Mercedes knew, or was reckless or negligent in not
13 knowing, that the Class Vehicles contain the HVAC System Defect, as alleged
14 above in paragraphs 87, 93-120. Mercedes concealed the Defect and made
15 representations about the safety, comfort, sophistication, and world-class quality,
16 and other attributes of the Class Vehicles, as specified above in paragraphs 124-
17 138.

18 c. **When:** Mercedes concealed material information regarding the
19 Defect at all times and made representations about the world-class quality,
20 sophistication, state-of-the-art safety and comfort of the Class Vehicles, starting no
21 later than 2008, or at the subsequent introduction of certain models of Class
22 Vehicles to the market, continuing through the time of sale/lease, and on an
23 ongoing basis, and continuing to this day, as alleged above in paragraphs 124-138.
24 Mercedes has not disclosed the truth about the Defect in the Class Vehicles to
25 anyone outside of Mercedes. Mercedes has never taken any action to inform
26 consumers about the true nature of the Defect in Class Vehicles. And when
27 consumers brought their Vehicles to Mercedes complaining of the foul moldy
28 odors, Mercedes denied any knowledge of or responsibility for the HVAC System

1 Defect, and in many instances, actually blamed the owner for causing the
2 odor/problem.

3 d. **Where:** Mercedes concealed material information regarding the
4 true nature of the Defect in every communication it had with Plaintiffs and Class
5 Members and made representations about the world-class quality, sophistication,
6 state-of-the-art safety and comfort of the Class Vehicles. Plaintiffs are aware of no
7 document, communication, or other place or thing, in which Mercedes disclosed the
8 truth about the Defect in the Class Vehicles to anyone outside of Mercedes. Such
9 information is not adequately disclosed in any sales documents, displays,
10 advertisements, warranties, owner's manual, or on Mercedes's website.

11 e. **How:** Mercedes concealed the HVAC System Defect from
12 Plaintiffs and Class Members and made representations about the world-class
13 quality, sophistication, state-of-the-art safety and comfort of the Class Vehicles.
14 Mercedes actively concealed the truth about the existence and nature of the Defect
15 from Plaintiffs and Class Members at all times, even though it knew about the
16 Defect and knew that information about the Defect would be important to a
17 reasonable consumer and Mercedes promised in its marketing materials that Class
18 Vehicles have qualities that they do not have.

19 f. **Why:** Mercedes actively concealed material information about
20 the Defect in Class Vehicles for the purpose of inducing Plaintiffs and Class
21 Members to purchase and/or lease Class Vehicles, rather than purchasing or leasing
22 competitors' vehicles and made representations about the world-class quality,
23 sophistication, state-of-the-art safety and comfort of the Class Vehicles. Had
24 Mercedes disclosed the truth, for example in its advertisements or other materials or
25 communications, Plaintiffs (and reasonable consumers) would have been aware of
26 it, and would not have bought the Class Vehicles or would have paid less for them.
27
28

TOLLING OF THE STATUTE OF LIMITATIONS

Fraudulent Concealment Tolling

141. Upon information and belief, Mercedes has known of the HVAC System Defect in the Class Vehicles since at least 2008, and certainly well before Plaintiffs and Class Members purchased or leased their Class Vehicles, and has concealed from or failed to notify Plaintiffs, Class Members, and the public of the full and complete nature of the HVAC System Defect, even when directly asked about it by Class Members during communications with Mercedes, Mercedes Customer Care, Mercedes dealerships, and Mercedes service centers. Mercedes continues to conceal the Defect to this day.

142. Any applicable statute of limitation has been tolled by Mercedes's knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

Estoppel

143. Mercedes was and is under a continuous duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the Class Vehicles. Mercedes actively concealed – and continues to conceal – the true character, quality, and nature of the Class Vehicles and knowingly made representations about the quality, world-class quality, sophistication, state-of-the-art safety and comfort of the Class Vehicles. Plaintiffs and Class Members reasonably relied upon Mercedes's knowing and affirmative representations and/or active concealment of these facts. Based on the foregoing, Mercedes is estopped from relying on any statutes of limitation in defense of this action.

Discovery Rule

144. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their Class Vehicles contained the HVAC System Defect.

145. However, Plaintiffs and Class Members had no realistic ability to discern that the Class Vehicles were defective until – at the earliest – after the HVAC System Defect caused their vehicles to develop mold and emit foul, noxious odors. Even then, Plaintiffs and Class Members had no reason to know the foul moldy odors were caused by a defect in the Class Vehicles because of Mercedes’s active concealment of the HVAC System Defect. Not only did Mercedes fail to notify Plaintiffs or Class Members about the HVAC System Defect, Mercedes in fact denied any knowledge of or responsibility for the HVAC System Defect when directly asked about it, and in many instances, actually blamed the owner for causing the odor/problem. Thus Plaintiffs and Class Members were not reasonably able to discover the HVAC System Defect until after they had purchased or leased the Class Vehicles, despite their exercise of due diligence, and their causes of action did not accrue until they discovered that the HVAC System Defect caused their Vehicles to form mold and emit foul, noxious odors.

CLASS ACTION ALLEGATIONS

146. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other Class Members similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), (b)(2), and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

147. Plaintiffs bring this class action on behalf of themselves and all other similarly situated members of the proposed Class, defined as follows:

All persons in the United States who purchased or leased a Class Vehicle with the HVAC System.

148. In the alternative, Plaintiffs propose the following Classes:

California Class: All residents of California (and states with similar laws) who purchased or leased a Class

1 Vehicle with the HVAC System.

2 Georgia Class: All residents of Georgia (and states with
3 similar laws) who purchased or leased a Class Vehicle
4 with the HVAC System.

5 149. Excluded from the Class are: (1) Mercedes, any entity or
6 division in which Mercedes has a controlling interest, and its legal representatives,
7 officers, directors, assigns, and successors; (2) the Judge to whom this case is
8 assigned and the Judge's staff; (3) governmental entities; and (4) those persons who
9 have suffered personal injuries as a result of the facts alleged herein. Plaintiffs
10 reserve the right to amend the Class definitions if discovery and further
11 investigation reveal that the Classes should be expanded, otherwise divided into
12 subclasses, or modified in any other way.

13 **Numerosity**

14 150. Although the exact number of Class Members is uncertain and
15 can only be ascertained through appropriate discovery, the number is great enough
16 such that joinder is impracticable. The disposition of the claims of these Class
17 Members in a single action will provide substantial benefits to all parties and to the
18 Court. Class Members are readily identifiable from information and records in
19 Mercedes's possession, custody, or control, as well as from records kept by the
20 Department of Motor Vehicles.

21 **Typicality**

22 151. The claims of the representative Plaintiffs are typical of the
23 claims of Class Members in that the representative Plaintiffs, like all Class
24 Members, purchased or leased a Class Vehicle designed, manufactured, and
25 distributed by Mercedes. The representative Plaintiffs, like all Class Members, have
26 been damaged by Mercedes's misconduct in that they have purchased a Vehicle
27 they would not have purchased, or would not have purchased at the price paid, and
28

1 have incurred or will incur the cost of repairs relating to and caused by the HVAC
2 System Defect. Furthermore, the factual bases of Mercedes's misconduct are
3 common to all Class Members and represent a common thread of misconduct
4 resulting in injury to all Class Members.

5 **Adequate Representation**

6 152. Plaintiffs will fairly and adequately represent and protect the
7 interests of their respective Class Members. Plaintiffs have retained counsel with
8 substantial experience in prosecuting consumer class actions, including actions
9 involving defective vehicles.

10 153. Plaintiffs and their counsel are committed to vigorously
11 prosecuting this action on behalf of the Classes, and have the financial resources to
12 do so. Neither Plaintiffs nor their counsel has interests adverse to those of the
13 Classes.

14 **Predominance of Common Issues**

15 154. There are numerous questions of law and fact common to
16 Plaintiffs and Class Members that predominate over any question affecting only
17 individual Class Members, the answer to which will advance resolution of the
18 litigation as to all Class Members. These common legal and factual issues include:

- 19 a. whether the HVAC System in the Class Vehicles is defective;
- 20 b. whether Mercedes knew or should have known about the HVAC
21 System Defect, and, if yes, how long Mercedes has known of the defect;
- 22 c. whether the defective nature of the Class Vehicles constitutes a
23 material fact reasonable consumers would have considered in deciding whether to
24 purchase a Class Vehicle;
- 25 d. whether Mercedes has a duty to disclose the defective nature of
26 the Class Vehicles to Plaintiffs and Class Members;
- 27 e. whether Mercedes omitted and failed to disclose material facts
28 about the Class Vehicles;

1 f. whether Mercedes's concealment of the true defective nature of
2 the Class Vehicles induced Plaintiffs and Class Members to act to their detriment
3 by purchasing Class Vehicles;

4 g. whether Mercedes represented, through its words and conduct,
5 that the Class Vehicles had characteristics, uses, or benefits that they did not
6 actually have, in violation of California's Consumer Legal Remedies Act
7 ("CLRA");

8 h. whether Mercedes represented, through its words and conduct,
9 that the Class Vehicles were of a particular standard, quality, or grade when they
10 were of another, in violation of the CLRA;

11 i. whether Mercedes advertised the Class Vehicles with the intent
12 not to sell them as advertised, in violation of the CLRA;

13 j. whether Mercedes's affirmative misrepresentations about the
14 true defective nature of the Class Vehicles were likely to mislead or deceive, and
15 therefore fraudulent, within the meaning of California's Unfair Competition Law
16 (UCL);

17 k. whether Mercedes's affirmative misrepresentations about the
18 true defective nature of the Class Vehicles were and are unfair within the meaning
19 of the UCL;

20 l. whether Mercedes represented, through its words and conduct,
21 that the Class Vehicles had characteristics, uses, or benefits that they did not
22 actually have, in violation of Georgia's Fair Business Practices Act ("Georgia
23 FBPA");

24 m. whether Mercedes represented, through its words and conduct,
25 that the Class Vehicles were of a particular standard, quality, or grade when they
26 were of another, in violation of the Georgia FBPA;

27 n. whether Mercedes advertised the Class Vehicles with the intent
28 not to sell them as advertised, in violation of the Georgia FBPA;

o. whether Mercedes's affirmative misrepresentations about the true defective nature of the Class Vehicles were likely to create confusion or misunderstanding, and therefore fraudulent, within the meaning of Georgia's Uniform Deceptive Trade Practices Act ("Georgia UDTPA").

p. whether Mercedes's affirmative misrepresentations about the true defective nature of the Class Vehicles were and are deceptive within the meaning of the Georgia UDTPA.

q. whether the Class Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

r. whether Plaintiffs and the other Class Members are entitled to a declaratory judgment stating that the HVAC Systems in Class Vehicles are defective and/or not merchantable;

s. whether Plaintiffs and the other Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction; and

t. whether Mercedes should be declared financially responsible for notifying all Class Members of the problems with the Class Vehicles and for the costs and expenses of permanently remedying the HVAC System Defect in the Class Vehicles; and

u. whether Mercedes is obligated to inform Class Members of their right to seek reimbursement for having paid to diagnose, repair, or replace the defective HVAC Systems.

Superiority

155. Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Mercedes's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

156. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Mercedes's misconduct. Absent a class action, Class Members will continue to incur damages, and Mercedes's misconduct will continue without remedy.

157. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(Violation of California's Consumer Legal Remedies Act ("CLRA"),
Cal. Civ. Code § 1750, *et seq.*)

158. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

159. Plaintiffs Manan Bhatt and Lisa Ruh bring this cause of action for themselves and on behalf of California Class Members.

160. Mercedes is a "person" as defined by the CLRA. Cal. Civ. Code § 1761(c).

161. Plaintiffs and California Class Members are "consumers" within the meaning of the CLRA. Cal. Civ. Code § 1761(d).

162. The purchases of Class Vehicles and the warranties by Plaintiffs and Class Members constitute "transactions" as defined by the CLRA. Cal. Civ. Code § 1761(e).

163. The Class Vehicles and the warranties constitute "goods" or "services" as defined by the CLRA. Cal. Civ. Code § 1761(a) and (b).

1 164. Plaintiffs and Class Members purchased the Class Vehicles and
2 the warranties for personal, family, and household purposes as meant by the CLRA.
3 Cal. Civ. Code § 1761(d).

4 165. Mercedes's affirmative misrepresentations, active concealment,
5 failures to disclose, and omissions regarding the Class Vehicles and the warranties
6 violated the CLRA in the following ways:

7 a. Mercedes misrepresented that the Class Vehicles and the
8 warranties had characteristics, benefits, or uses that they did not have (Cal. Civ.
9 Code § 1770(a)(5));

10 b. Mercedes misrepresented that the Class Vehicles and the
11 warranties were of a particular standard, quality, or grade when they were of
12 another (Cal. Civ. Code § 1770(a)(7));

13 c. Mercedes advertised the Class Vehicles and the warranties with
14 an intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9));

15 d. Mercedes misrepresented that the Class Vehicles and the
16 warranties conferred or involved rights, remedies, or obligations that they did not
17 have (Cal. Civ. Code § 1770(a)(14)); and

18 e. Mercedes misrepresented that the Class Vehicles and the
19 warranties were supplied in accordance with previous representations when they
20 were not (Cal. Civ. Code § 1770(a)(16)).

21 166. Mercedes's unfair and deceptive acts or practices occurred
22 repeatedly in Mercedes's course of trade or business, were material, were capable
23 of deceiving a substantial portion of the purchasing public, and as a result, caused
24 economic harm on owners and purchasers of the Class Vehicles.

25 167. Mercedes knew, by 2008 at the latest, and certainly before the
26 sale or lease of the Class Vehicles, that the Class Vehicles' HVAC Systems
27 suffered from an inherent defect, were defectively designed or manufactured, would
28

1 exhibit problems such as mold growth and the emission of foul and noxious odors,
2 and were not suitable for their intended use.

3 168. By 2008 at the latest, Mercedes had exclusive knowledge of
4 material facts concerning the existence of the HVAC System Defects in its Class
5 Vehicles. Furthermore, Mercedes actively concealed these defects from consumers
6 by denying the existence of the defects to Class Members who contacted Mercedes
7 about the moldy smell, failing to issue a service advisory and/or recall and failing to
8 offer Class members a permanent solution to the HVAC System Defect.

9 169. Mercedes was under a duty to Plaintiffs and Class Members to
10 disclose the defective nature of the HVAC Systems, as well as the associated costs
11 that would have to be repeatedly expended in order to repair the Class Vehicles due
12 to the HVAC System Defect, because:

13 a. Mercedes was in a superior position to know the true state of
14 facts about the HVAC System Defect in the Class Vehicles;

15 b. Plaintiffs and Class Members could not reasonably have been
16 expected to learn or discover that the Class Vehicles had the HVAC System Defect
17 until, at the earliest, the manifestation of the Defect; and

18 c. Mercedes knew that Plaintiffs and Class Members could not
19 reasonably have been expected to learn or discover the HVAC System Defect prior
20 to its manifestation.

21 170. In failing to disclose the defective nature of the Class Vehicles,
22 Mercedes knowingly and intentionally concealed material facts and breached its
23 duty not to do so.

24 171. The facts concealed or not disclosed by Mercedes to Plaintiffs
25 and Class Members are material in that a reasonable consumer would have
26 considered them to be important in deciding whether or not to purchase or lease a
27 Class Vehicle. Moreover, a reasonable consumer would consider the HVAC
28 System Defect to be an undesirable quality, as Plaintiffs and Class Members did.

1 Had Plaintiffs and other Class Members known that the Class Vehicles had the
2 HVAC System Defect, they would not have purchased or leased a Class Vehicle, or
3 would not have done so at the price paid.

4 172. Plaintiffs and Class Members are reasonable consumers who did
5 not expect their Class Vehicles to experience a HVAC System Defect. It is a
6 reasonable and objective consumer expectation for consumers to expect the HVAC
7 System not to cause the growth of mold and mildew within the System or emit
8 moldy and noxious odors through the HVAC System vents.

9 173. As a result of Mercedes's misconduct, Plaintiffs and Class
10 Members have been harmed and have suffered actual damages in that the Class
11 Vehicles repeatedly manifest mold growth and emit foul smells due to the HVAC
12 System Defect, causing inconvenience, creating an uncomfortable environment for
13 vehicle occupants, and causing Class Members to spend money, even when the
14 Vehicle was still under warranty, to repeatedly repair or temporarily fix the
15 recurring odors caused by the Defect.

16 174. As a direct and proximate result of Mercedes's unfair or
17 deceptive acts or practices, Plaintiffs and Class Members have suffered and will
18 continue to suffer actual damages in that they have experienced and may continue
19 to experience their Class Vehicles' HVAC Systems growing mold and emitting
20 noxious odors, for which there is no permanent fix.

21 175. Plaintiffs and the Class are entitled to equitable relief.

22 176. Mercedes received proper notice of its alleged violations of the
23 CLRA pursuant to Cal. Civ. Code § 1782(a), via a letter sent to Mercedes and its
24 registered service agent on August 17, 2015, on behalf of Plaintiff Manan Bhatt and
25 all others similarly situated. Mercedes failed to provide the appropriate relief for its
26 violation of the CLRA within 30 days of the date of the notification letter. The
27 notice letter is attached hereto as Exhibit D.
28

177. Thus, pursuant to Cal. Civ. Code §§ 1780(a), 1780(e), and 1782(a), Plaintiffs seek, in addition to equitable relief, actual damages, restitution, punitive damages, attorneys' fees and costs, and any other relief the Court deems proper.

SECOND CAUSE OF ACTION

(Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*)

178. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

179. Plaintiffs Manan Bhatt and Lisa Ruh bring this cause of action for themselves and on behalf of California Class Members.

180. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Mercedes engaged in conduct that violated each of this statute's three prongs.

181. Mercedes committed an *unlawful business act or practice* in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by systematically breaching its warranty obligations and by violating the CLRA and the Song-Beverly Consumer Warranty Act as alleged in Paragraphs 159 – 178, above.

182. Mercedes committed *unfair business acts and practices* in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, because the acts and practices described herein, including but not limited to Mercedes's failure to provide a permanent remedy to fix the HVAC System Defect, were immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and Class Members. Mercedes's acts and practices were additionally unfair because the harm to Plaintiffs and Class Members is substantial and is not outweighed by any countervailing benefits to consumers or competition. Further,

1 Mercedes's acts and practices were unfair in that they were contrary to legislatively
2 declared or public policy.

3 183. Mercedes committed *fraudulent business acts and practices* in
4 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it concealed the
5 existence and nature of the HVAC System Defect, while representing in its
6 marketing, advertising, and other broadly disseminated representations that the
7 Class Vehicles were "comfortable," "state of the art," and manufactured to be the
8 "most advanced vehicles on the road" when, in fact, they are not. Mercedes's
9 representations and active concealment of the Defect are likely to mislead the
10 public with regard to the true defective nature of the Class Vehicles.

11 184. Mercedes's unfair or deceptive acts or practices occurred
12 repeatedly in the course of Mercedes's trade or business, and were likely to mislead
13 a substantial portion of the purchasing public.

14 185. Plaintiffs relied on Mercedes's material misrepresentations and
15 nondisclosures, and would not have purchased, or would have paid less money for,
16 the Class Vehicles had they known the truth.

17 186. As a direct and proximate result of Mercedes's unfair, unlawful,
18 and deceptive practices, Plaintiffs have lost money or property.

19 187. Plaintiffs and Class Members seek an order enjoining Mercedes
20 from committing such unlawful, unfair, and fraudulent business practices, and seek
21 restitution pursuant to Cal. Bus. & Prof. Code § 17203. Plaintiffs also seek
22 attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

23 **THIRD CAUSE OF ACTION**

24 (Breach of Implied Warranty Under Song-Beverly Consumer Warranty Act)

25 188. Plaintiffs incorporate by reference each allegation set forth in
26 the preceding paragraphs.

27 189. Mercedes's Class Vehicles are "consumer goods" within the
28 meaning of Civil Code § 1791(a).

1 190. Mercedes is a “manufacturer” within the meaning of Civil Code
2 § 1791(j).

3 191. Plaintiffs and California Class members who purchased or
4 leased their Class Vehicles within the State of California and are “buyers” within
5 the meaning of Cal. Civ. Code § 1791(b).

6 192. Mercedes impliedly warranted to Plaintiffs and the California
7 Class members that its Vehicles were “merchantable” within the meaning of Cal.
8 Civ. Code §§ 1791.1(a) and 1792.

9 193. Mercedes impliedly warranted to Plaintiffs and the California
10 Class Members that it would repair or replace any defective products, including the
11 defective HVAC System that produces the moldy odor.

12 194. The propensity of the HVAC System defect to create a noxious
13 and foul moldy odor renders the Class Vehicles to not be of the quality that a buyer
14 would reasonably expect, and therefore were not merchantable.

15 195. The Class Vehicles do not conform to the promises or
16 affirmations of fact made by Mercedes in its promotional materials and vehicle
17 owner manuals in that the HVAC System Defect creates an environment in the
18 Class Vehicles’ cabin that is neither “comfortable” nor the product of “state-of-the-
19 art engineering.”

20 196. In violation of Civil Code § 1791.1(a), Mercedes breached its
21 Implied Warranty by selling Class Vehicles that were defective and refusing to
22 replace and/or repair the defective HVAC Systems which cannot be repaired by
23 replacing the cabin air filter.

24 197. The HVAC System defect has deprived Plaintiffs and the
25 California Class of the benefit of their bargain, and have caused the Class Vehicles
26 to depreciate in value.

1 consumer as a condition of securing remedy, then the consumer shall be entitled to
2 recover reasonable incidental expenses which are so incurred in any action against
3 the warrantor.”

4 207. At no time has Mercedes offered a permanent or adequate repair
5 or replacement of the HVAC System that would permanently prevent the moldy
6 odor. Despite repeated demands by Plaintiffs, and members of the Class, that
7 Mercedes pay the labor costs and incidental expenses associated with repairing or
8 replacing the HVAC System, and with replacing the cabin air filter—a temporary
9 solution--Mercedes has refused to do so. Mercedes’s refusal to provide an adequate
10 repair or replacement and to pay for its installation violates 15 U.S.C. § 2304(d)(1).

11 208. Mercedes was afforded a reasonable opportunity to cure its
12 breach of the Express Warranty, but failed to do so.

13 209. Under 15 U.S.C. § 2310(e), notice of breach of warranty need
14 not be provided until after Plaintiffs have been appointed Class Representatives.

15 210. As a direct and proximate result of Mercedes’s breach of its
16 express written warranties, Plaintiffs and the members of the Class have been
17 damaged in an amount to be proven at trial.

18 **FIFTH CAUSE OF ACTION**

19 (Breach of Implied Warranty)

20 211. Plaintiffs incorporate by reference each allegation set forth in
21 the preceding paragraphs.

22 212. When it sold its Class Vehicles, Mercedes extended an implied
23 warranty to the members of the Class that the subject vehicles were merchantable
24 and fit for the ordinary purpose for which such goods were sold. Persons who
25 purchased a vehicle from Mercedes are entitled to the benefit of their bargain: a
26 vehicle with a nondefective HVAC system that does not emit moldy air.

27 213. Mercedes breached this implied warranty in that its Class
28 Vehicles are (1) not fit for ordinary use, and (2) not of a merchantable quality.

214. Had the HVAC System Defect that existed at the time of sale been known, the Class Vehicles could not have been sold, or could not have been sold at the same price.

215. As a direct and proximate result of Mercedes's breach of the implied warranty of merchantability, Plaintiffs and the members of the Class have been damaged in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

(Breach of Implied Warranty – Magnuson-Moss Warranty Act)

216. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

217. Plaintiffs and the members of the Class are consumers as defined in 15 U.S.C. § 2301(3).

218. Defendant Mercedes is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

219. Defendant Mercedes is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

220. The subject Class Vehicles are consumer products as defined in 15 U.S.C. § 2301(1).

221. Mercedes extended an implied warranty to Plaintiffs and the members of the Class by operation of 15 U.S.C. § 2301(7), and this implied warranty covers defects in its Class Vehicles and its Class Vehicles' HVAC Systems.

222. Mercedes breached this implied warranty by selling its Class Vehicles with Defective HVAC Systems that were neither merchantable nor fit for their intended purpose.

223. Mercedes extended an implied warranty to Plaintiffs and the members of the Class by operation of 15 U.S.C. § 2301(7), and this implied warranty covers defects in the subject Class Vehicles' HVAC Systems.

224. Mercedes breached this implied warranty by selling Class Vehicles that were neither merchantable nor fit for their intended purpose.

225. Under 15 U.S.C. § 2310(e), notice of breach of warranty need not be provided until after Plaintiff have been appointed Class Representatives.

226. Mercedes was notified of its breach of warranty by way of Plaintiffs' August 17, 2015, letter. A true and correct copy of the letter sent to Mercedes is attached as Exhibit D.

227. As a direct and proximate result of Mercedes's breach of the implied warranty under the Magnuson-Moss Act, Plaintiffs, and the Class, have been damaged in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

(Violations of Georgia Fair Business Practices Act ("Georgia FBPA"), Ga. Code. Ann. § 10-1-390, *et seq.*)

228. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

229. Plaintiffs Sunil Amin and Trushar Patel bring this cause of action for themselves and on behalf of the Georgia Class.

230. Mercedes is a "person" as defined by the Georgia FBPA. § 10-1-392(a)(24).

231. Plaintiffs and the Georgia Class are "consumers" within the meaning of the Georgia FBPA O.C.G.A § 10-1-392(a)(6).

232. The purchase or lease of Class Vehicles by Plaintiffs and the Georgia Class constituted "consumer transactions" as defined by the Georgia FBPA § 10-1-392(a)(10).

233. The Georgia FBPA declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, Ga. Code. Ann. § 10-1-393(a), including but

1 not limited to “representing that goods or services have sponsorship, approval,
2 characteristics, ingredients, uses, or benefits that they do not have,” “[r]epresenting
3 that goods or services are of a particular standard, quality, or grade ... if they are of
4 another,” and “[a]dvertising goods or services with intent not to sell them as
5 advertised,” Ga. Code. Ann. § 10-1-393(b)(5), (7) & (9).

6 234. By failing to disclose the defective nature of the Class Vehicles
7 to Plaintiffs and the Georgia Class, Mercedes violated the Georgia FBPA, because
8 Mercedes represented that the Class Vehicles had characteristics and benefits that
9 they do not have, and represented that the Class Vehicles were of a particular
10 standard, quality, or grade (i.e. state-of-the-art, comfortable, etc.) when they were
11 of another. *See* Ga. Code. Ann. § 10-1-393(b)(5) & (7).

12 235. Mercedes advertised the Class Vehicles (as state-of-the-art,
13 comfortable, etc.) with the intent not to sell them as advertised, in violation of Ga.
14 Code. Ann. § 10-1-393(b)(9).

15 236. Mercedes’s unfair and deceptive acts or practices occurred
16 repeatedly in Mercedes’s course of trade or business, were material, were capable
17 of deceiving a substantial portion of the purchasing public, and as a result, caused
18 economic harm on owners and purchasers of the Class Vehicles.

19 237. Mercedes knew, by 2008 at the latest, and certainly before the
20 sale or lease of the Class Vehicles, that the Class Vehicles’ HVAC Systems
21 suffered from an inherent defect, were defectively designed or manufactured, would
22 exhibit problems such as mold growth and the emission of foul and noxious odors,
23 and were not suitable for their intended use.

24 238. By 2008 at the latest, Mercedes had exclusive knowledge of
25 material facts concerning the existence of the HVAC System Defects in its Class
26 Vehicles. Furthermore, Mercedes actively concealed these defects from consumers
27 by denying the existence of the defects to Class Members who contacted Mercedes
28

1 about the moldy smell, failing to issue a service advisory and/or recall and failing to
2 offer Class members a permanent solution to the HVAC System Defect.

3 239. Mercedes was under a duty to Plaintiffs and Class Members to
4 disclose the defective nature of the HVAC Systems, as well as the associated costs
5 that would have to be repeatedly expended in order to repair the Class Vehicles due
6 to the HVAC System Defect, because:

7 a. Mercedes was in a superior position to know the true state of
8 facts about the HVAC System Defect in the Class Vehicles;

9 b. Plaintiffs and the Georgia Class could not reasonably have been
10 expected to learn or discover that the Class Vehicles had the HVAC System Defect
11 until, at the earliest, the manifestation of the Defect; and

12 c. Mercedes knew that Plaintiffs and the Georgia Class could not
13 reasonably have been expected to learn or discover the HVAC System Defect prior
14 to its manifestation.

15 240. Mercedes knew or should have known that its conduct violated
16 the Georgia FBPA.

17 241. In failing to disclose the defective nature of the Class Vehicles,
18 and/or denying and misleading as to the true cause and remedy of the noxious foul
19 odor, Mercedes knowingly and intentionally concealed material facts and breached
20 its duty not to do so.

21 242. The facts concealed or not disclosed by Mercedes to Plaintiffs
22 and the Georgia Class are material in that a reasonable consumer would have
23 considered them to be important in deciding whether or not to purchase or lease a
24 Class Vehicle. Moreover, a reasonable consumer would consider the HVAC
25 System Defect to be an undesirable quality, as Plaintiffs and the Georgia Class did.
26 Had Plaintiffs and other Georgia Class members known that the Class Vehicles had
27 the HVAC System Defect, they would not have purchased or leased a Class
28 Vehicle, or would not have done so at the price paid.

1 243. Plaintiffs and Georgia Class are reasonable consumers who did
2 not expect their Class Vehicles to experience a HVAC System Defect. It is a
3 reasonable and objective consumer expectation for consumers to expect the HVAC
4 System not to cause the growth of mold and mildew within the System or emit
5 moldy and noxious odors through the HVAC System vents.

6 244. As a result of Mercedes's misconduct, Plaintiffs and the Georgia
7 Class have been harmed and have suffered actual damages in that the Class
8 Vehicles repeatedly manifest mold growth and emit foul smells due to the HVAC
9 System Defect, causing inconvenience, creating an uncomfortable environment for
10 vehicle occupants, and causing Plaintiffs and the Georgia Class to spend money to
11 repeatedly repair or temporarily fix the recurring odors caused by the Defect.

12 245. As a direct and proximate result of Mercedes's unfair or
13 deceptive acts or practices, Plaintiffs and the Georgia Class have suffered and will
14 continue to suffer actual damages in that they have experienced and may continue
15 to experience their Class Vehicles' HVAC Systems growing mold and emitting
16 noxious odors, for which there is no permanent fix.

17 246. Mercedes's violations present a continuing risk to Plaintiffs and
18 to the general public. Mercedes' unlawful acts and practices complained of herein
19 affect the public interest.

20 247. Plaintiffs and the Georgia Class are entitled to equitable relief.

21 248. Mercedes has received proper notice of its alleged violations of
22 the FBPA pursuant to Ga. Code. Ann. § 10-1-399(b), via a letter sent to Mercedes
23 and its registered service agent on January 29, 2016. The notice letter is attached
24 hereto as Exhibit C. Mercedes responded through counsel denying the existence of
25 a defect, alleging the problem to be a "maintenance" issue, implying, presumably,
26 that Plaintiffs and Class Members who have experienced these symptoms have all
27 failed to properly maintain their vehicles, and offering Mr. Amin a small amount to
28 resolve his claim alone.

249. Thus, pursuant to Ga. Code. Ann. § 10-1-399, Plaintiffs seek, in addition to equitable relief, actual, statutory, attorneys' fees and expenses, treble damages, and punitive damages as permitted under the Georgia FBPA (Ga. Code. Ann. § 10-1-390, *et seq.*) and applicable law.

EIGHTH CAUSE OF ACTION

(Violations of Georgia's Uniform Deceptive Trade Practices Act ("Georgia UDTPA"), Ga. Code. Ann. § 10-1-370, *et seq.*)

250. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

251. Plaintiffs Sunil Amin and Trushar Patel bring this cause of action for themselves and on behalf of the Georgia Class.

252. Mercedes, Plaintiffs, and the Georgia Class are "persons" within the meaning of the Georgia UDTPA. § 10-1-371(5).

253. The Georgia UDTPA prohibits "deceptive trade practices" which include the "misrepresentation of standard, quality, or grade of goods and services," "engaging in any other conduct which similar creates a likelihood of confusion or misunderstanding," and "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, or benefits that they do not have," and "[a]dvertising goods or services with intent not to sell them as advertised," Ga. Code. Ann. § 10-1-372.

254. By failing to disclose the defective nature of the Class Vehicles to Plaintiffs and the Georgia Class, Mercedes engaged in deceptive trade practices in violation of the Georgia UDTPA, because Mercedes represented that the Class Vehicles had characteristics and benefits that they do not have, and represented that the Class Vehicles were of a particular standard, quality, or grade (i.e. state-of-the-art, comfortable, etc.) when they were of another. *See* Ga. Code. Ann. § 10-1-372(5), (7), (9).

1 255. Mercedes advertised the Class Vehicles (as state-of-the-art,
2 comfortable, etc.) with the intent not to sell them as advertised, in violation of Ga.
3 Code. Ann. § 10-1-372(12).

4 256. Mercedes's unfair and deceptive acts or practices occurred
5 repeatedly in Mercedes's course of trade or business, were material, were capable
6 of deceiving a substantial portion of the purchasing public, and as a result, caused
7 economic harm on owners and purchasers of the Class Vehicles.

8 257. Mercedes knew, by 2008 at the latest, and certainly before the
9 sale or lease of the Class Vehicles, that the Class Vehicles' HVAC Systems
10 suffered from an inherent defect, were defectively designed or manufactured, would
11 exhibit problems such as mold growth and the emission of foul and noxious odors,
12 and were not suitable for their intended use.

13 258. By 2008 at the latest, Mercedes had exclusive knowledge of
14 material facts concerning the existence of the HVAC System Defects in its Class
15 Vehicles. Furthermore, Mercedes actively concealed these defects from consumers
16 by denying the existence of the defects to the Georgia Class who contacted
17 Mercedes about the moldy smell, failing to issue a service advisory and/or recall
18 and failing to offer Class members a permanent solution to the HVAC System
19 Defect.

20 259. Mercedes was under a duty to Plaintiffs and the Georgia Class to
21 disclose the defective nature of the HVAC Systems, as well as the associated costs
22 that would have to be repeatedly expended in order to repair the Class Vehicles due
23 to the HVAC System Defect, because:

24 a. Mercedes was in a superior position to know the true state of
25 facts about the HVAC System Defect in the Class Vehicles;

26 b. Plaintiffs and the Georgia Class could not reasonably have been
27 expected to learn or discover that the Class Vehicles had the HVAC System Defect
28 until, at the earliest, the manifestation of the Defect; and

1 c. Mercedes knew that Plaintiffs and the Georgia Class could not
2 reasonably have been expected to learn or discover the HVAC System Defect prior
3 to its manifestation.

4 260. Despite possessing information to the contrary, Mercedes failed
5 to disclose and actively concealed the defect while continuing to market the Class
6 Vehicles as comfortable, world-class, and reliable. The deception made reasonable
7 consumers believe that Class Vehicles were of high quality and designed and made
8 by a manufacturer that stood behind its vehicles once they were on the road.

9 261. Mercedes knew or should have known that its conduct violated
10 the Georgia UDTPA.

11 262. In failing to disclose the defective nature of the Class Vehicles,
12 and/or denying and misleading as to the true cause and remedy of the noxious foul
13 odor, Mercedes knowingly and intentionally concealed material facts and breached
14 its duty not to do so.

15 263. The facts concealed or not disclosed by Mercedes to Plaintiffs
16 and the Georgia Class are material in that a reasonable consumer would have
17 considered them to be important in deciding whether or not to purchase or lease a
18 Class Vehicle. Moreover, a reasonable consumer would consider the HVAC
19 System Defect to be an undesirable quality, as Plaintiffs and Class Members did.
20 Had Plaintiffs and the Georgia Class known that the Class Vehicles had the HVAC
21 System Defect, they would not have purchased or leased a Class Vehicle, not
22 purchased a Mercedes vehicle, or would not have done so at the price paid.

23 264. Plaintiffs and the Georgia Class are reasonable consumers who
24 did not expect their Class Vehicles to experience a HVAC System Defect. It is a
25 reasonable and objective consumer expectation for consumers to expect the HVAC
26 System not to cause the growth of mold and mildew within the System or emit
27 moldy and noxious odors through the HVAC System vents.
28

1 265. As a result of Mercedes's misconduct, Plaintiffs and the Georgia
2 Class have been harmed and have suffered actual damages in that the Class
3 Vehicles repeatedly manifest mold growth and emit foul smells due to the HVAC
4 System Defect, causing inconvenience, creating an uncomfortable environment for
5 vehicle occupants, and causing Class Members to spend money to repeatedly repair
6 or temporarily fix the recurring odors caused by the Defect.

7 266. As a direct and proximate result of Mercedes's unfair or
8 deceptive acts or practices, Plaintiffs and the Georgia Class have suffered and will
9 continue to suffer actual damages in that they have experienced and may continue
10 to experience their Class Vehicles' HVAC Systems growing mold and emitting
11 noxious odors, for which there is no permanent fix.

12 267. Mercedes's violations present a continuing risk to Plaintiffs and
13 to the general public. Mercedes' unlawful acts and practices complained of herein
14 affect the public interest.

15 268. As a direct and proximate result of Mercedes' violations of the
16 Georgia UDTPA, Plaintiffs and the Georgia Class have suffered injury-in-fact
17 and/or actual damage.

18 269. Plaintiffs seek an order enjoining Mercedes' unfair, unlawful,
19 and/or deceptive practices, attorneys' fees, and any other just and proper relief
20 available under the Georgia UDTPA per Ga. Code. Ann. § 10-1-373, and applicable
21 law.

22 **NINTH CAUSE OF ACTION**

23 (Breach of Implied Warranty of Merchantability)

24 270. Plaintiffs incorporate by reference each allegation set forth in
25 the preceding paragraphs.

26 271. Plaintiffs bring this cause of action for themselves and on behalf
27 of Class Members who are Georgia residents ("Georgia Class").
28

272. Georgia law states that “[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” Ga. Code. Ann. § 11-2-314.

273. Defendants are merchants with respect to the goods which they sold to Plaintiff and the Georgia Class. Specifically, Defendants are merchants of light-duty passenger vehicles.

274. The goods which Defendants provided to Plaintiffs and the Georgia Class were unmerchantable at the time they were sold. Specifically, the Class Vehicles contained HVAC systems emitting foul odors rendering them not fit for ordinary use as automobiles, not able to pass without objection, not of fair average quality and did not confirm with promises and affirmations made.

275. Defendants' failure to provide vehicles was a breach of the implied warranty of merchantability, and Plaintiff and the other Class Members were damaged in an amount to be proven at trial.

TENTH CAUSE OF ACTION

(Fraud by Concealment)

276. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

277. Plaintiffs bring this cause of action for themselves and on behalf of Class Members.

278. Mercedes concealed and suppressed material facts concerning the quality of the Class Vehicles.

279. Mercedes concealed and suppressed material facts concerning the quality of the HVAC systems in the Class Vehicles.

280. Mercedes concealed and suppressed material facts concerning the serious defects causing Class Vehicles to emit strong foul odors. Upon information and belief, the defect lies in the evaporator and evaporator box deep within the dashboards of the Class Vehicles. Mercedes knew that Plaintiffs and

1 Class Members would not be able to inspect or otherwise detect the defect prior to
2 purchasing or leasing the vehicles. Mercedes furthered and relied upon this lack of
3 disclosure to further promote payments of repairs and filters and in some cases
4 accused Plaintiffs and Class Members of causing the problem or paying for filters –
5 all the while concealing the true nature of cause and defect from Plaintiffs and
6 Class Members. Mercedes further denied the very existence the defect and the
7 propensity of foul odors when Plaintiffs and Class Members complained of the
8 defect.

9 281. Mercedes concealed and suppressed material facts that point to
10 the nature of the defect being a faulty evaporator design, a \$400 to \$800 or more
11 part requiring extensive labor and parts to replace and instead pushed “fixes”
12 consisting of filter changes and cleanings which are temporary at best.

13 282. Mercedes did so in order to boost confidence in its vehicles and
14 falsely assure purchasers and lessees of Mercedes vehicles, that the Class Vehicles
15 were world class, comfortable, warranted and reliable vehicles and concealed the
16 information in order to prevent harm to Defendants’ and their products reputations
17 in the marketplace and to prevent consumers from learning of the defective nature
18 of the Class Vehicles prior to their purchase or lease. These false representations
19 and omissions were material to consumers, both because they concerned the quality
20 of the Class Vehicles and because the representations and omissions played a
21 significant role in the decision to purchase or lease the Class Vehicles.

22 283. Mercedes had a duty to disclose the defects in the Class
23 Vehicles because they were known and/or accessible only to Mercedes; Mercedes
24 had superior knowledge and access to the facts; and Mercedes knew the facts were
25 not known to, or reasonably discoverable, by Plaintiffs and Class Members.
26 Mercedes also had a duty to disclose because it made many general affirmative
27 representations about the quality, warranty, and lack of defects the Class Vehicles
28 as set forth above, which were misleading, deceptive, and/or incomplete without the

1 disclosure of the additional facts set forth above regarding its actual quality,
2 comfort, and usability. Even when faced with complaints regarding the defects,
3 Mercedes misled and concealed the true cause of the symptoms complained of. As
4 a result, Class Members were misled as to the true condition of the Class Vehicles
5 once at purchase and again when the defect was complained of to Defendants. The
6 omitted and concealed facts were material because they directly impact the value,
7 appeal and usability of the Class Vehicles purchased or leased by Plaintiffs and
8 Class Members. Whether a manufacturer's products are as stated by the
9 manufacturer, backed by the manufacturer, and usable for the purpose it was
10 purchased, are material concerns to a consumer.

11 284. Mercedes actively concealed and/or suppressed these material
12 facts, in whole or in part, to protect its reputation, sustain its marketing strategy,
13 avoid recalls that would hurt the brand's image and cost money, and it did so at the
14 expense of Plaintiffs and Class Members.

15 285. On information and belief, Mercedes has still not made full and
16 adequate disclosure and continues to defraud Plaintiffs and Class Members and
17 conceal material information regarding defects that exist in Mercedes Vehicles.

18 286. Plaintiffs and Class Members were unaware of these omitted
19 material facts and would not have acted as they did if they had known of the
20 concealed and/or suppressed facts, in that they would not have purchased or leased
21 cars manufactured by Mercedes or chosen different models not known to exhibit
22 foul odors. Plaintiffs' and Class Members' actions were justified. Mercedes was in
23 exclusive control of the material facts and such facts were not known to the public,
24 Plaintiffs, or Class Members.

25 287. Because of the concealment and/or suppression of the facts,
26 Plaintiffs and Class Members sustained damage because they negotiated and paid
27 value for the Class vehicles not considerate of the defects Mercedes failed to
28 disclose and paid for repairs and parts to attempt to remedy the defect. Had they

1 been aware of the many concealed defects that existed in the Class Vehicles,
2 Plaintiffs would have paid less for their vehicles or would not have purchased or
3 leased them at all.

4 288. Accordingly, Mercedes is liable to Plaintiffs and Class Members
5 for damages in an amount to be proven at trial.

6 289. Mercedes' acts were done maliciously, oppressively,
7 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and
8 Class Members' rights and well-being to enrich Mercedes. Mercedes' conduct
9 warrants an assessment of punitive damages in an amount sufficient to deter such
10 conduct in the future, which amount is to be determined according to proof.

11 **ELEVENTH CAUSE OF ACTION**

12 (Unjust Enrichment)

13 290. Plaintiffs incorporate by reference each allegation set forth in
14 the preceding paragraphs.

15 291. Mercedes has been unjustly enriched by the purchases of the
16 Class Vehicles by the Plaintiffs and other members of the Class through Plaintiffs
17 and Class member purchasing Class vehicles from Mercedes and purchasing
18 replacement parts from Mercedes that Plaintiffs and Class Members would not have
19 purchased but for the HVAC System defect.

20 292. Plaintiffs and other members of the Class unknowingly
21 conferred a benefit on Mercedes of which Mercedes had knowledge, since
22 Mercedes was aware of the defective nature of its Class Vehicles' HVAC Systems
23 and the resultant moldy odor problems, but failed to disclose this knowledge and
24 misled Plaintiffs and the other members of the Class regarding the nature and
25 quality of the subject Class Vehicles while profiting from this deception.

26 293. The circumstances are such that it would be inequitable,
27 unconscionable, and unjust to permit Mercedes to retain the benefit of profits that it
28 unfairly obtained from Plaintiffs and the other members of the Class. These profits

1 include the premium price Plaintiffs and the Class paid for the Class Vehicles and
2 the cost of the parts bought from Mercedes used to repair or alleviate the moldy
3 odor emitted by the HVAC system.

4 294. Plaintiffs and the other members of the Class, having been
5 damaged by Mercedes's conduct, are entitled to recover or recoup damages as a
6 result of the unjust enrichment of Mercedes to their detriment.

7 **RELIEF REQUESTED**

8 295. Plaintiffs, on behalf of themselves, and all others similarly
9 situated, request the Court to enter judgment against Mercedes, as follows:

10 a. an order certifying the proposed Classes, designating Plaintiffs
11 as named representatives of their respective Classes, and designating the
12 undersigned as Class Counsel;

13 b. a declaration that the HVAC Systems in Class Vehicles are
14 defective;

15 c. a declaration that Mercedes is financially responsible for
16 notifying all Class Members about the defective nature of the Class Vehicles;

17 d. an order enjoining Mercedes from further deceptive distribution,
18 sales, and lease practices with respect to the Class Vehicles, and to permanently
19 repair the Class Vehicles so that they no longer possess the HVAC System Defect;

20 e. an award to Plaintiffs and Class Members of compensatory,
21 exemplary, and statutory damages, including interest, in an amount to be proven at
22 trial;

23 f. a declaration that Mercedes must disgorge, for the benefit of
24 Plaintiffs and Class Members, all or part of the ill-gotten profits it received from the
25 sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class
26 Members;

27 g. an award of attorneys' fees and costs, as allowed by law;
28

1 h. an award of pre-judgment and post-judgment interest, as
2 provided by law;

3 i. leave to amend this Complaint to conform to the evidence
4 produced at trial; and

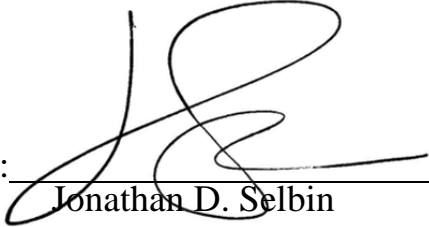
5 j. such other relief as may be appropriate under the circumstances.

6 **DEMAND FOR JURY TRIAL**

7 296. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs
8 demands a trial by jury of any and all issues in this action so triable of right.

9 Dated: May 9, 2016

Respectfully submitted,

10
11
12 By: 
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